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THE SINCERITY OF THE MIXED-MARRIAGE PROMISES
ACCORDING TO RECENT LEGISLATION

by

John Matthew Makothakat

A dissertation submitted to the
Faculty of Canon Law, Saint Paul
University, Ottawa, in partial
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BIOGRAPHICAL NOTE

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ABBREVIATIONS

AAS	Acta Apostolicae Sedis
AC	L'Année Canonique
ACR	Australasian Catholic Record
AFER	African Ecclesiastical Review
AER	American Ecclesiastical Review
CIC	Codex Iuris Canonici
CLD	Canon Law Digest
CPR.	Commentarium pro Religiosis et Missionariis
CR	Clergy Review
DC	La Documentation Catholique
DE	Il Diritto Ecclesiastico
EIC	Ephemerides Iuris Canonici
ER	Ecclesiastical Review
HPR	Homiletic and Pastoral Review
IER	Irish Ecclesiastical Record
ITQ	Irish Theological Quarterly
JP	Jus Pontificium
ME	Monitor Ecclesiasticus
NRT	Nouvelle revue théologique
RDC	Revue de droit canonique

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INTRODUCTION

The aim of this study is to examine the relevance of sincerity in the mixed-marriage promises, focusing, in particular, on its understanding and emphasis in the present legislation. This will be done through an analysis of the legislation to be found in the Codex Iuris Canonici and in other related documents studied in their historical context and doctrinal setting; likewise, through an analysis of jurisprudence, and of the Conciliar and post-Conciliar documents. Such a study will enable us to trace the changing notion of this requirement of sincerity, and to determine its significance in the present and proposed future legislation.

As a condition for dispensation from the matrimonial impediments of mixed religion and disparity of worship, the legislation of Canon 1061 required these promises of the couple: the non-Catholic partner, baptized or unbaptized, was to promise that he would not endanger the faith of his Catholic partner; and both partners were to promise to baptize and bring up all their children exclusively in the Catholic faith. The legislation also required that the dispensing superior have moral certainty concerning the fulfilment of the promises by the couple.

In some of the pre-Code documents indicated as sources of Canon 1061, the dispensing superior had to have moral

certainty not only concerning the fulfilment of the promises in the future but also concerning their sincerity at the time when they were being made. However, the legislation of Canon 1061 did not explicitly demand this moral certainty on the part of the dispensing superior.

After 1920, the sincerity of the mixed-marriage promises became a subject of much discussion and dispute. Canonists questioned whether or not insincere promises, made by one or both of the partners in order to obtain a dispensation from the impediments of mixed religion and disparity of worship, would render the dispensation invalid, and indeed the marriage itself, if the latter impediment were involved. Some argued for the validity of the dispensation, some against it; still others preferred to consider the question as a dubium iuris and hoped for an authoritative interpretation.

The matter was further complicated by the fact that, after the promulgation of the CIC, numerous documents relating to the mixed-marriage promises were issued by the Sacred Congregations of the Holy Office and for the Propagation of the Faith. Although none of these documents purported to settle the dispute over the necessity of sincerity for the validity of a dispensation, proponents of both views drew supporting arguments from them.

The relevance of the sincerity of the mixed-marriage promises was examined, from 1921 to 1958, by the Sacred Roman Rota in a number of cases, and in a 1949 case, by the Tribunal of the Vicariate of Rome. Five of the Rotal decisions touched on the matter only indirectly, and, of these, two argued for the validity of a dispensation, and three against. There are, however, three other Rotal decisions and one by the Tribunal of the Vicariate of Rome which dealt directly with the relevance of sincerity in the mixed-marriage promises. In these cases, marriages were declared null on the grounds that insincere promises invalidated the dispensations from the impediment of disparity of worship.

It is against the background of such controversy and jurisprudence that we have to examine the Conciliar and post-Conciliar developments concerning the sincerity of the mixed-marriage promises. Hence, it is not surprising to note that in the first draft document related to the mixed-marriage legislation, proposed by the Conciliar Preparatory Commission for the Sacraments, the promises prescribed by Canon 1061 were modified to read: "[...] promises sincerely" ("sincere cautionem praestiterit"). This phrase has been retained in most of the Conciliar and post-Conciliar documents dealing with the promises.

Later, according to the Instruction, Matrimonii Sacramentum (1966), the Catholic partner was required to make

an explicit promise, and the non-Catholic was to be invited to promise sincerely and openly that, at least, he would not impede the fulfilment of the promises by his Catholic partner. Subsequent to Matrimonii Sacramentum, the S.C. for the Doctrine of the Faith, granted a number of dispensations in instances where no promise could be had from the non-Catholic partner, but where the Catholic was sincerely prepared to do his best to procure the baptism and upbringing of the children in the Catholic faith. A further investigation of the relevance of sincerity in the promises was carried out during the 1967 Synod of Bishops in its discussions on mixed marriages.

According to the Motu Proprio, Matrimonia Mixta (1970), in seeking a dispensation from the impediments of mixed religion and disparity of worship, the Catholic partner is required to make a declaration concerning his intention to safeguard his faith; he is also required to make a sincere promise to do his best to procure the baptism and Catholic upbringing of the children. Many of the Episcopal Directories, implementing the norms of Matrimonia Mixta, have retained the expression, sincere promise to do his best, in one form or another, although they contain a wide variety of interpretations as to what this sincere promise might imply in the concrete situation of a mixed marriage.

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From the information available to date concerning the proposed new legislation on mixed marriages, it appears that, in seeking a dispensation, the Catholic would still have to make a declaration of intention concerning the protection of his own faith, and also a sincere promise to do his best to procure the Catholic upbringing of the children.

The notion and significance of the sincerity of the mixed-marriage promises appears to have changed gradually during and after the Council. The following factors seem to have exerted an influence in bringing about a change: the Catholic Church's desire to bring its mixed-marriage legislation in line with the conditions of our time; the desire for unity among all Christians, and the Catholic Church's recognition of the salvific means also available in other ecclesial communities; the recognition of the right of every person to hold firmly to his or her religious beliefs and convictions; and the emphasis placed on the common God-given role and responsibility of the parents for the religious upbringing of their children.

In the light of the above principles enunciated by the Council, the sincerity now required in the mixed-marriage promises seems to have a new relevance, a new dimension. It is no longer considered primarily in its relation to the

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validity of a dispensation. Rather, the obligation to safeguard his faith rests on the Catholic himself; the non-Catholic partner is only to be informed of the obligations of the Catholic partner. The declaration and sincere promise of the Catholic are primarily a means through which he is made aware of the obligation imposed on him by God himself, an obligation deriving from his own faith-commitment and his belief in the Catholic Church. In the fulfilment of his obligation, the Catholic needs to have respect for the faith and religious convictions of his partner; he needs to take into account the shared rights and duties of both parents toward the children, and also the over-all good of the marriage and the peace and harmony in the home.

This study proposes to trace these developments and changes in the notion and relevance of sincerity in the mixed-marriage promises. It will be divided into two parts. In order to place the Conciliar and post-Conciliar developments in their proper context, we shall first examine the legislation in the pre-Code documents cited as sources of Canon 1061, and the legislation in the CIC itself; then, we shall study the post-Code legislation and Rotal jurisprudence, all of which will provide a proper understanding of the pre-Conciliar situation.

The main interest of our study, however, is in the present legislation which is primarily the result of Conciliar

and post-Conciliar developments. The study of these developments will involve an analysis of the Vota, Schemata, deliberations, and decisions of the Second Vatican Council, of the provisions of the interim norms in the Instruction, Matrimonii Sacramentum, of the dispensations granted by the S.C. for the Doctrine of the Faith subsequent to the above Instruction, and of the deliberations and recommendations of the 1967 Synod of Bishops.

The current legislation is to be found in the Motu Proprio, Matrimonia Mixta. But this document provides only general norms which the Episcopal Conferences are to implement according to the particular needs and situations of their respective territories. Hence, a number of Episcopal Directories will be studied together with Matrimonia Mixta. The study of these general and particular legislations will enable us to evaluate the proposed new legislation.

At the conclusion of our study, we will be able to answer the question we had in mind when undertaking this work: how do we explain the change in the notion, significance, and relevance of the sincerity in the promises in view of the Church's consistent affirmation that in every mixed marriage the "divine law requirements" must be fulfilled?

PART ONE

THE PRE-CONCILIAR SITUATION

CHAPTER I

SOURCES OF CANON 1061 OF THE CIC

The attitude of the Catholic Church toward mixed marriages -- marriages involving a Catholic and a non-Catholic, baptized or unbaptized -- has been, in general, one of opposition and disapproval. The Church at times even discouraged Catholics from entering into such unions. Indeed, it was only when the Catholic partner could not be dissuaded from entering into such a marriage that the Church agreed to lift its prohibition, and did so as an act of tolerance, provided certain conditions were fulfilled.

The Church has firmly and consistently justified its attitude to mixed marriages. It felt that they very often placed both the faith of the Catholic partner and that of the offspring in jeopardy. The concern over mixed marriages stemmed from its own understanding of its role in the world in the plan of salvation established by Christ. Firmly convinced of the necessity of the faith for salvation, it felt duty-bound to safeguard the faith of its members, to try to lead all people to the true faith, and to ensure the baptism and upbringing of all children in this true faith, which it believed was to be found only in the Catholic Church. In addition to these ecclesiological reasons, the Church's

understanding of marriage as such justified its stance. It taught marriage to be sacred and sacramental, symbolic of Christ's union with the Church. This symbol, in its view, was more realized and its permanence better assured when there was harmony in the faith and religious practice of the couple.

Although the Church was forced to make special provisions for marriages involving royal and noble families from the early seventeenth century, most of its legislation on mixed marriages was enacted from the eighteenth century on when civil authorities began to grant juridical status to the many Protestant Churches, and when the Catholic Church began its missionary activities in remote lands. This body of legislation reflected its attitude toward mixed marriages and its concern for those who entered into them. Yet, the legislation which evolved over the centuries was modified by circumstances and experience. While the earlier legislation reflected the Church's non-tolerant attitude toward those who were considered to be heretics and schismatics, the later laws reflected a more tolerant and welcoming attitude toward the unbaptized. In all, however, it was the Church's pastoral zeal and mission, as it perceived them at a given time or in particular circumstances, that brought about the legislation, its evolution and modification.

Since authoritative and scholarly studies are available in this area,¹ we do not intend to deal here with the historical evolution of the mixed-marriage legislation or even with the evolution of the mixed-marriage promises regarding their content and form. Instead, in order to place the legislation of Canon 1061 of the CIC relative to mixed-marriage promises in its proper historical context and doctrinal setting, we shall begin our study with an analysis of its immediate sources.

The 36 items listed as sources² of Canon 1061 cover an extensive period, 1748-1906. These documents can be classified into two general categories: Papal writings and Curial texts. More specifically, they comprise Apostolic

¹ See, for example, H.J. Feye, Dissertatio Canonica de Matrimoniis Mixtis (1847); I.H. Bangen, De Matrimonio Mixto (1860); J. Planchard, "Dispense de disparité de culte et de religion mixte - pratique, indults et instructions du Saint-Siège", in NRT, 15(1883), pp. 393-441, 500-531, 573-601; F.J. Schenk, The Matrimonial Impediments of Mixed Religion and Disparity of Worship (1929); F. Ter Haar, Mixed Marriages and Their Remedies (1933); A.J. Connick, "Canonical Doctrine concerning Mixed Marriages - Before Trent and during the Seventeenth and early Eighteenth Centuries", in The Jurist, 20(1960), pp. 295-326, 398-418; R.G.W. Huysmans, "De Ortu Impedimentorum Mixtae Religionis ac Disparitatis Cultus", in EIC, 23(1967), pp. 187-261; "De Vicissitudinibus Impedimenti Mixtae Religionis a Reformatione Protestantica usque ad Codicem Iuris Canonici", in EIC, 25(1969), pp. 205-291.

² All references to the sources are to P. Gasparri - I. Sarédi, Codicis Iuris Canonici Fontes, 9 Volumes (1923-1939). Hereafter cited simply as Gasparri, Fontes.

Letters, Encyclical Epistles, Epistles, Rescripts; Instructions and Responses from the Sacred Congregations of the Holy Office and for the Propagation of the Faith, and from the Secretariate of State.³ Very few of the documents were addressed to the Universal Church; most of them were to deal with specific problems and situations in Europe; yet some were addressed to bishops in other parts of the world. The scope and importance of these documents go well beyond a study of Canon 1061, since many of them are also sources for a number of other canons.⁴ Although these texts touch upon one or another aspect of mixed marriages, they do not all contain specific legislation on this subject. Together, they serve to illustrate the attitude of the Church toward mixed marriages, the reasons for its opposition to them, and the circumstances and conditions under which it permitted their celebration.

We shall examine in a particular way those documents which have immediate bearing on the question of the sincerity in the promises. Placing them chronologically in their

3 These titles are as they appear in the Fontes. Some of the names attributed to these documents do not correspond to the present day understanding of their classification. See F.G. Morrissey, The Canonical Significance of Papal and Curial Pronouncements, [Hartford, Conn.], Canon Law Society of America, [1975], 23 pp.

4. See Gasparri, Fontes, IX, Table B , pp. 14-327.

historical context, we intend to illustrate what these documents state, or at least imply, individually and collectively, concerning the sincerity of the promises.

Benedictus XIV, ep. encycl. Magnae Nobis,
29 iun. 1748

The encyclical epistle of June 29, 1748, addressed to the bishops of Poland, had as its purpose to correct some misconstrued opinions and practices. The encyclical alleges that there was a false notion in Poland that the Holy See had been granting dispensations from the impediment of mixed religion without prior abjuration of heresy. It also condemns the alleged practice of those who sought matrimonial dispensations without specifically mentioning that one of the partners to the marriage was a non-Catholic.

After reviewing briefly the teachings of the earlier Popes on mixed marriages, the encyclical contends that the Popes have consistently required the prior abjuration of heresy as a condition for dispensation. If, however, some dispensations were granted without prior abjuration, the Pope argues, they were very rare, involved marriages between royal families, entailed serious and urgent reasons affecting the public good, and were granted only on the conditions that the Catholic spouse would not be led astray by his partner, that he would consider it his obligation to retrieve his partner from error, and that the children of both sexes to be

born of the union would be raised in the Catholic faith.⁵

Pius VI, rescript. ad Card. Archiep.
Mechlinien., 13 iul. 1782

The rescript of July 13, 1782 was occasioned by a particular situation in Belgium. Civil legislation was enacted requiring the assistance of pastors at all mixed marriages. Faced with the conflict between ecclesiastical and civil laws, the Archbishop of Malines referred the matter to the Holy See.

In its dispositive part, the reply restates briefly the teachings of the earlier Popes on mixed marriages. Then, in the legislative part, the Pope, in order to avoid further conflicts with the civil authorities, gives permission to pastors to assist, simply as a material witness, at these marriages, but only on the following conditions: that the non-Catholic partner take a written oath, signed in the presence of two witnesses, to ensure the religious freedom of the Catholic and the upbringing in the Catholic faith of all the children to be born; that the Catholic partner himself

5 "[...] insuper adiectas semper fuisse opportunas cautelas, tum ne Coniux Catholicus ab Haeretico perverti posset, quin potius ille teneri se sciret ad hunc pro viribus ab errore retrahendum; tum etiam, ut proles utriusque sexus ex eo Matrimonio procreanda, in Catholicae Religionis sanctitate omnino educaretur", in Gasparri, Fontes, II, 387, p. 149.

take a written oath, signed before two witnesses, that he would not fall away from his faith, that he would bring up in the Catholic faith all the children to be born, and that he would strive efficiently for the conversion of his spouse.⁶

S. C. de Prop. Fide, instr. (ad Vic.
Ap. Sveciae), 6 sept. 1785

The Vicar Apostolic of Sweden requested from the Holy See permission to allow pastors to assist at mixed marriages and also to impart the nuptial blessing. The instruction from the S. C. for the Propagation of the Faith, September 6, 1785, contains the reply to this request, a reply dictated very much by the particular situation in Sweden. Lutheranism was very strong. The instruction even alleges that it was the favoured religion of the civil authorities, and that there was a concerted effort on their part to arrest the growth of the Catholic Church. Civil law required all or at least some of the children to be raised in the religion of the father.

6 "[...] ut exigat et recipiat a contrahente haeretico declarationem in scriptis, qua cum iuramento, praesentibus duobus testibus, qui debebunt et ipsi subscribere, obliget se ad permittendum comparti usum liberum religionis catholicae et ad educandum in eadem omnes liberos nascituros sine ulla sexus distinctione; [...] ut et ipse contrahens catholicus declarationem edat a se et duobus testibus subscriptam, in qua cum iuramento promittit, non tantum se nunquam apostataturum a religione sua catholica, sed educaturum in ipsa omnem prolem nascituram, et procuraturum se efficaciter conversionem alterius contrahentis acatholici", in Gasparri, Fontes, II, 471, p. 657.

The instruction refuses permission to impart the nuptial blessing. However, it authorizes the Vicar Apostolic to allow pastors to assist at marriages when moral certainty could be had through the promises that the danger to the faith of the Catholic partner was eliminated, and that all children would be raised in the Catholic faith.⁷

S. C. S. Off., instr. (ad Archiep.
Quebecen.), 16 sept. 1824

Among the series of doubts proposed to the Holy Office by the Archbishop of Quebec, one concerned the petition for baptism by a woman married to a non-Catholic. The Holy Office replied to the Archbishop that, after he had informed the woman about the invalidity of her marriage on account of the impediment of disparity of worship, she could be admitted to baptism. And if she, after her baptism, chose to remain married to her former partner, the bishop should see that the practice of the Holy See concerning mixed marriages be observed, practice regarding the manner of

⁷ "Ma quando pur mai avvenisse il caso, in cui potesse il Vicario Apostolico assicurarsi con morale certezza, che in uno di questi tali matrimoni fosse escluso il pericolo della perversione del coniuge cattolico, e si fosse coi precedenti patti assicurata l'educazione cattolica di tutta la prole, potrebbe pur allora tollerarsi, che egli vi assistesse, [...]" , in Gasparri, Fontes, VII, 4606, p. 158.

celebration and the requirement of the promises.⁸

Pius VIII, litt. ap. Litteris altero,
25 mart. 1830

In 1825, the Common Law Code of Prussia (1794) was extended to the provinces of Rhineland and Westphalia, which embraced the dioceses of Cologne, Trier, Münster, and Paderborn.⁹ It required that all children of mixed marriages born in the provinces subject to the provisions of the above Code be raised in the religion of the father or that the decision concerning the religious upbringing of the children be left to his discretion. The law also forbade pastors assisting at mixed marriages to demand any promise from the partners regarding the religious upbringing of the children. This difficult situation was brought to the attention of Pope Leo XII (d. 1827). His successor, Pope Pius VIII, wished to deal with it in the apostolic letter, addressed to the Archbishop of Cologne and the bishops of Trier, Münster, and Paderborn.

8 "[...] Atque in primis prae oculis habeat Episcopus, ac, prout fieri potest, servari curet praxim S. Sedis, regulasque ab ea praescribi solitas cum ob graves causas in huiusmodi matrimoniis dispensat, nimirum: [...]; ut pars catholica gravissime moneatur de obligatione quam habet, quaeque nunquam ei cessat, curandi conversionem coniugis et educationem proles utriusque sexus in catholica religione; ac demum ut catholica proles educatio etiam in pactum iuramento firmatum deducatur", in Gasparri, Fontes, IV, 866, pp. 150-151.

9 See I.H. Bangen, De Matrimonio Mixto, pp. 17-19.

The Pope, notwithstanding the difficulty posed by the civil legislation, reasserts the teachings of his predecessors and the consistent requirement concerning the provision for the religious freedom of the Catholic, the conversion of his partner, and the religious upbringing of the children in the Catholic faith. The Pope adds that these provisions touch upon divine and natural laws, and that anyone violating them sins not only against canonical legislation but also against divine and natural laws. As a strong motive to ensure the baptism of the children in the Catholic faith, the Pope adduces the teaching that outside the true Catholic faith no one can be saved.¹⁰

Gregorius XVI, ep. encycl. Summo iugiter, 27 maii 1832

The encyclical epistle of May 27, 1832, addressed to the bishops of Bavaria, was prompted partly by the enactment

¹⁰ "[...] Romani Pontifices [...] suisque dispensationibus adiacere consueverunt conditionem expressam de praemittendis matrimonio opportunis cautionibus, [...] Nostis [...] ipsas omnes cautiones eo spectare, ut hac in re naturales divinaeque leges sartae tectaeque habeantur, quandoquidem exploratum est, catholicas personas seu viros, seu mulieres, quae nuptias cum acatholicis ita contrahunt, ut se aut futuram sobolem periculo perversionis temere committant, non modo canonicas violare sanctiones, sed directe etiam, gravissimeque in naturalem ac divinam legem peccare. [...] et maxime opportunum erit eandem [mulierem catholicam] adhortari, ut meminerit firmissimum illud nostrae religionis dogma, quod extra veram catholicam fidem nemo salvus esse potest", in Gasparri, Fontes, II, 482, pp. 734-735.

of civil legislation ordering pastors to assist at all mixed marriages, even when the couple refused to make any promise concerning the religious upbringing of the children. The law also threatened pastors with the withdrawal of all subsidy if they failed to comply.

Despite the difficult situation created by the civil law, the Pope exhorts the bishops and priests to uphold firmly the law of the Church on mixed marriages. He reaffirms the teachings and legislation of his predecessors, emphasizing also the divine and natural law obligation of the parents to baptize and bring up all their children in the Catholic faith, adducing once again the teaching that outside the Catholic faith and Catholic Church no one can be saved.¹¹

¹¹ "[...] Romani ipsi Pontifices [...] suisque dispensationibus consueverunt adiacere conditionem expressam de praemittendis matrimonio debitae cautionibus, [...]. Ignotum Vobis non est, [...] quam impenso constantique studio maiores Nostri inculcaverint eum ipsum, quem illi negare audent, fidei articulum, qui est de catholicae fidei atque unitatis necessitate ad consequendam salutem. [...] Quare si res ita postulet, revocare in illorum [fidelium] memoriam oportebit notissimum illud naturalis divinaeque legis praeceptum, quo non peccata solum, sed pericula etiam ad peccatum proxime inducentia vitare iubemur, uti et praeceptum aliud eiusdem legis, quo parentibus iniungitur, filios educare in disciplina et correptione Domini (Eph., VI, 4), ideoque et erudire ipsos ad verum Dei cultum, qui unice in catholica religione est", in Gasparri, Fontes, II, 484, pp. 740-743.

Gregorius XVI, litt. ap. Quas
vestro, 30 apr. 1841

The bishops of Hungary had apparently informed Pope Gregory XVI of the practice in their dioceses where mixed marriages, entered into without dispensations and the usual promises, were solemnized and blessed by pastors. They had also brought to the attention of the Pope that, because of the very grave and difficult circumstances in Hungary, they had adopted a tolerant attitude which permitted pastors to assist, as material witnesses, at mixed marriages, when the Catholic partner insisted on the marriage while persisting in his refusal to give the usual promises.

In his apostolic letter, sent as a reply to the bishops, the Pope commends them on their effort and zeal to correct the abuses in their respective dioceses regarding the law of the Church on mixed marriages. He repeats briefly the teachings of his predecessors and states that the promises are founded on divine and natural laws. Taking into account the particular and difficult circumstances explained by the bishops in their letter, the Pope allows pastors to assist, as material witnesses, at marriages, even when the promises prescribed by the Church could not be had; he agrees to this provision as an act of tolerance and in order to avoid greater evil and scandal. The Pope adds that even in these

circumstances the bishops and pastors should find ways to protect the faith of the Catholic partner and to admonish him of his obligation regarding the conversion of his partner and the religious upbringing of the children in the Catholic faith.¹²

S. C. S. Off., 30 iun. 1842

Although many Papal and Curial documents referred to mixed-marriage promises as opportunaes cautiones, none of them gave any more specification on their nature. When the Holy Office was asked what exactly was meant by cautio opportuna, its reply, dated June 30, 1842, was that it is a promise made or drawn up in the form of an agreement or a pact to produce the moral basis for a prudent judgement concerning the truth

12 "[...] ut, si [...] haec Apostolica Sedes mixta istiusmodi matrimonia quandoque permisit, id gravibus dumtaxat de causis, aegreque admodum fecerit, et nonnisi expressa sub conditione de praemittendis opportunis cautionibus, [...]. Quae certae cautiones in ipsa divina et naturali lege fundantur, in quam procul dubio gravissime peccat quisque se vel futuram sobolem perversionis periculo temere committit. [...]. His tamen in circumstantiis, [...] maiori etiam conatu et studio per Episcopos et parochos elaborandum est, ut a catholica parte perversionis periculum quoad fieri poterit, amoveatur, ut prolis utriusque sexus educationi in religione catholica, quo meliori modo fas erit, cautum sit, atque ut coniux catholicae fidei adhaerens serio admoneatur de obligatione, qua tenetur, curandi pro viribus acatholici coniugis conversionem, [...]" in Gasparri, Fontes, II, 497, pp. 789-791.

of its fulfilment.¹³

Gregorius XVI, ep. Non sine gravi,
23 maii 1846

In a letter dated March 4, 1846, the Bishop of Fribourg informed Pope Gregory XVI of his concern over the frequent occurrences of mixed marriages in his diocese and the interference of the civil authorities in this matter. He sought also some clarification regarding the nuptial blessing to be given at these marriages. Through his epistle, the Pope reaffirms the position of the Church on mixed marriages and states also how its prohibition and the exacting of the promises are to meet the requirements of divine and natural laws.¹⁴

13 "Quid accurate et strictissime sumpta significat cautio opportuna? [...] Talem promissionem, quae in pactum deducta praebeat morale fundamentum de veritate executionis, ita ut prudenter eiusmodi executio expectari possit", in Gasparri, Fontes, IV, 890, p. 167.

14 "Compertum enim exploratumque est, catholicos, seu viros seu mulieres, qui mixtis nuptiis temere contrahendis, se ac prolem inde suscipiendam in perversionis periculum iniiciunt, contra naturalem divinamque legem peccare. Quam sane legem sartam tectamque tueri contendit Ecclesia et haec Apostolica Sedes, seu in generali ipsarum nuptiarum prohibitionem, seu in cautionibus, quas iure suo exigit, [...]", in Gasparri, Fontes, II, 503, p. 805.

Secret. Status, instr. 15 nov. 1858

The instruction of November 15, 1858, sent to all the bishops of the world by the Secretary of State, is a restatement and summary of the Church's teachings and legislation on mixed marriages. Regarding the promises, the instruction asserts that they can never be dispensed with, as they are founded on divine and natural laws. The document further explains that no solemnities are permitted with the celebration of these marriages in order to remind Catholics of the Church's strong opposition to such unions, and also as a means of deterring them from entering into such marriages.¹⁵

S. C. S. Off. (Helvetiae), 21 ian. 1863

In some provinces of Switzerland, civil law required the children to be raised in the religion of the father. In view of this, the Holy Office instructed the bishops in those

¹⁵ "[...] Quae quidem cautiones remitti, seu dispensari nunquam possunt, cum in ipsa naturali, ac divina lege fundentur, quam Ecclesia, et haec Sancta Sedes sartam tectamque tueri omni studio contendit, et contra quam sine ullo dubio gravissime peccant, qui promiscuis hisce nuptiis temere contrahendis, se ac prolem exinde suscipiendam perversionis periculo committunt. Insuper in tribuendis huiusmodi dispensationibus, praeter enunciatas cautiones, quae praemitti semper debent, et super quibus dispensari ullo modo nunquam potest, adiectas quoque fuere conditiones, [...]" in Gasparri, Fontes, VIII, 6454, p. 482.

provinces not to grant dispensations unless it was at least morally certain that the Catholic partner sincerely desired and was able to carry out the obligations and promises.¹⁶

S. C. de Prop. Fide, litt. encycl.
11 mart. 1869

In order to dispel some misunderstandings deriving from the instruction of the Secretary of State, November 15, 1858,¹⁷ the S. C. for the Propagation of the Faith followed it with a letter of its own. It alleges that the instruction was misinterpreted in many parts, and that dispensations were being granted without just and grave causes. Concerning the promises, the letter states that they should be exacted always, since they are required by divine and natural laws as a means of eliminating the danger intrinsic to mixed marriages.¹⁸

16 "Che nei luoghi ove esiste la legge che i figli debbano seguire la religione del padre, nel caso che questi sia eretico, non si accordi mai la dispensa, se non consta moralmente almeno che la parte cattolica sinceramente voglia, ed efficacemente possa adempire le obbligazioni e cauzioni", in Gasparri, Fontes, IV, 973, p. 247.

17 See Gasparri, Fontes, VIII, 6454, pp. 481-486.

18 "Cautiones enim illae ideo naturali divinoque iure exiguntur atque exigi debent, ut pericula intrinseca quae mixtis insunt matrimoniis removeantur", in Gasparri, Fontes, VII, 4872, p. 408.

S. C. S. Off., instr. (ad Vic. Ap. Oceaniae Central.), 18 dec. 1872

In a letter dated May 8, 1872, the Vicar Apostolic of Central Oceania proposed a series of doubts to the Holy Office concerning the marriages of the unbaptized in his territory. One of the doubts concerned a possible marriage between a neophyte and an unbaptized woman. In its instruction of December 18, 1872, the Holy Office replied that, if the woman refused to be converted to the Catholic faith, the Vicar Apostolic could grant a dispensation from the impediment of disparity of worship, but only on these conditions: that the neophyte strive earnestly for the conversion of the woman; and that she promise, under oath, to see that the children would be raised in the Catholic faith, and not to impede the religious practice of the neophyte or of the children.¹⁹ (

19 "[...] quatenus vero converti renuat, [dispensat] ab impedimento disparitatis cultus, sub hisce tamen in hoc altero casu conditionibus eidem neophyto imponendis, ut omni studio curet conversionem mulieris a se electae, et interim promissionem iuratam ab ea exigat, se curaturam, ut proles educetur in religione catholica, neque ullum unquam illaturam esse impedimentum sive sibi, hoc est ipso neophyto, sive proli in religionis christianae exercitio", in Gasparri, Fontes, IV, 1024, p.334.

S. C. S. Off., litt. (S. Germani),
17 febr. 1875

In its letter to the Bishop of Rimouski, the Holy Office stated that the requirement of the oath in support of the promises by the non-Catholic could be omitted in certain cases, as it is only an ecclesiastical prescription. What is essential for the dispensation is that the promises be so serious as to produce moral certainty in the bishop that they would be kept. However, an oath in support of the promises may be demanded if this moral certainty could not be obtained otherwise.²⁰

S. C. de Prop. Fide, litt. (ad Ep.
Ottawien.), 17 apr. 1879

Through its letter of April 17, 1879, the S. C. for the Propagation of the Faith replied to the bishop of Ottawa that, in spite of the adverse civil laws alleged by him, the

²⁰ "La conditione del giuramento (da prestarsi nei matrimoni misti dalla parte eterodossa nel premettere le solite cauzioni) è una prescrizione veramente ecclesiastica dalla quale può talvolta prescindere se le circostanze lo consentano. Chè per farsi luogo alla dispensa nei matrimoni misti è essenziale solamente la promessa delle solite cauzioni, la quale dev'essere così seria, che il Vescovo riesca a formarsi la certezza morale che sarà dal coniuge eterodosso osservata ed adempiuta fedelmente; e dove egli o per le qualità del soggetto, o per altre circostanze non potesse acquistare simile certezza, può a buon diritto domandare che la promessa sia munita di giuramento", in Gasparri, Fontes, IV, 1039, p. 355.

bishops should obtain the promises in writing as usual. It further warned the bishops not to grant dispensations when they were convinced that the promises were not made sincerely.²¹

S. C. S. Off. (ad Ep. Aurelianen.),
6 iun. 1879

Replying to a query by the Vicar General of the diocese of Orleans concerning the manner of exacting the promises, the Holy Office replied that they should be made, signed and attested by oath, in the presence of an officialis in the diocesan curia. If making the promises in the curia proves to be absolutely impossible, then, with the prior permission of the bishop or his officialis, they may be made in the presence of the pastor. The dispensation, however, is not to be granted before the document containing the promises is received in the curia. There should also be moral

21 "[...] i Vescovi di cotesto dominio debbon procurare di ottenere che (nei matrimonii misti) le consuete cauzioni si diano sempre in iscritto, come già si pratica, e quante volte in qualche caso particolare siano convinti che le medesime non fossero prestate con sincerità di animo, non concedano la dispensa", in Gasparri, Fontes, VII, 4894, pp. 470-471.

certainty concerning the fulfilment of the promises.²²

S. C. S. Off., instr. (ad omnes Ep.
Ritus Orient.), 12 dec. 1888

Because of some confusion and certain difficulties regarding mixed marriages among the faithful of the Oriental rites, Pope Leo XIII commissioned the Holy Office to prepare an instruction to be sent to all the bishops of the Oriental rites. This instruction, dated December 12, 1888, is a document dealing with many aspects of mixed marriages in general terms. It explains the theological basis for the Church's opposition to them; it clarifies the nature of the impediments of mixed religion and disparity of worship, and restates the teachings and legislation found in other Papal writings and Curial documents. The requirement of the promises is emphasized very strongly, and the instruction asserts that no human authority can permit a mixed marriage without these provisions, since they are required by divine

²² "[...] nempe contrahentes curiam episcopalem adire debere [...]. Si vero curiam adire absolute nequeant, [...] coram parrocho supradictam promissionem subscribant; ita tamen ut non antea dispensatio concedatur quam documentum promissionum seu cautionum a parrocho assumptum ad curam episcopalem perventum fuerit. Ceterum praeprimis cavendum ne cum iis dispensetur qui moralem non praebent certitudinem se datas promissiones fideliter esse observaturos", in Gasparri, Fontes, IV, 1064, p. 383.

and natural laws.²³

Secret. Status, litt. 7 iul. 1890

In Hungary, a civil ordinance was enacted which ordered pastors to inform the non-Catholic ministers of the baptism of children born of mixed marriages. The Archbishop of Esztergom, on behalf of the bishops of Hungary, asked the Secretary of State whether the pastors could comply with this civil ordinance, and also whether, in the aftermath of the ordinance, the bishops could still use their faculties to dispense from the impediment of mixed religion. In his letter of July 7, 1890, the Secretary of State replied negatively to both queries. He further added that the bishops could grant dispensations only if the promises were

23 "Cum christianorum coniugium unionem inter Christum et Ecclesiam exprimat, monente Apostolo Paulo - Sacramentum hoc magnum est, ego autem dico in Christo et in Ecclesia - (ad Eph., V, 32) aperte patet sanctum prorsus esse vinculum maritale, quo inter se ipsi copulantur. Cum autem fides sit omnis sanctitatis radix atque fundamentum, pariter nemo non videt, coniuges ut mutua sese unione sanctificent, sicut in reliquis, ita et potissimum fide cohaerere debere. Mirum proinde non est, si inter cetera quae matrimonium impediunt, etiam illud accensetur quod mixtae communionis impedimentum proprio nomine appellatur. [...] Exigendae enim praeterea sunt opportuna a contrahentibus cautiones [...] Has autem cautiones ius naturale ac divinum cum postulet, nulla unquam humana auctoritate mixtae nuptiae sine ipsis permitti possunt. Positis igitur canonicis causis, ac praehabitis memoratis cautionibus, quibus arcentur quae legi naturali aut divinae adversantur, [...] dispensatio [...] impetranda est, [...]" in Gasparri, Fontes, IV, 112, pp. 440-442.

made formally by both partners and if the bishops were morally certain of the sincerity of the promises and their fulfilment.²⁴

S. C. S. Off., 10 dec. 1902

Because of a civil law which forbade soldiers to make the promises in whatever form, the bishop of a particular territory found it difficult to grant dispensations when a Catholic girl wished to marry a non-Catholic soldier. He, therefore, asked the Holy Office whether he might grant dispensations when the non-Catholic refused to make the promises in any form, and also whether the statement of the Catholic, made under oath, that his partner has privately agreed to comply with the requirement would suffice.

Through its letter of December 10, 1902, the Holy Office replied negatively to both queries. It further added an explanation on the manner of making the promises. Ordinarily they should be made in writing. The dispensation could not be granted unless there was moral certainty that the promises would be fulfilled. If in certain extraordinary

²⁴ "[...] Prima in eo est, ut tam pars catholica quam acatholica formaliter omnes praestet cautiones quae naturali et divino iure in matrimoniis mixtis exiguntur; Altera est, ut moraliter certi sint Episcopi de sponsionum sinceritate eorumque implemento, non obstantibus litteris circularibus a gubernio datis", in Gasparri, Fontes, VIII, 6455, p. 486.

circumstances the bishop felt morally certain of the sincerity of the promises at the present and their fulfilment in the future, and if they could not be made in the usual manner on account of some special reasons, then the granting of the dispensation was left to the conscience and prudence of the bishop.²⁵

* * * * *

From the above analysis of the sources of Canon 1061, we can draw the following general conclusions:

What emerges very clearly from these documents is the overriding concern of the Church for the faith of the Catholic partner and the baptism and religious upbringing of the children in the Catholic faith. This concern appears to be inspired mainly by its own teaching that there is no salvation outside the Catholic Church.

The Church felt that mixed marriages very often placed the faith of the Catholic partner and that of the

25 "[...] Mens est: Quod si in aliquo casu extraordinario talia concurrant adiuncta, ut Episcopus valeat sibi comparare moralem certitudinem tam de huiusmodi cautionum sinceritate pro praesenti, quam de earum adimplemento pro futuro, specialesque omnino adsint rationes impediennes ne consueto modo cautiones praestentur, ipsius conscientiae et prudentiae. Caeteroquin non obstante decreto regio, opportuna exhibeantur in scriptis cautiones, sicut hucusque factum est; neque detur dispensatio nisi Episcopus moraliter certus sit eas impletum iri", in Gasparri, Fontes, IV, 1262, pp. 538-539.

offspring in danger. Because of this danger intrinsic to such marriages, they are forbidden by divine and natural laws. As long as this danger persists, they can never become licit. Indeed, for these marriages to become licit, the divine and natural laws impose two conditions: that the danger to the faith of the Catholic be eliminated or at least made remote, and that the baptism and upbringing of all the children in the Catholic faith be ensured. The Church insisted that it could not dispense from these conditions, because they are imposed by divine and natural laws. However, it never did explain these principles of divine and natural laws. It would seem that the claim to these principles of divine and natural laws is a reflection of current ecclesiology, a reflection of the Church's own understanding of her role and mission in the world.

Commenting on this claim to the principles of divine law, Fr. L. Örsy makes the following remarks:

Ever since the problem of the religious education of children born from mixed marriages was debated in the Church, i.e., from the 17th century, the Holy See has taken one official position, and only one: it is a matter of divine law that all the children should be educated in the Catholic religion. This principle was never formally defined, or infallibly stated as dogma, but there was never any departure from it. The practical conclusion was consistently drawn by Popes and their immediate collaborators in Rome: if the Catholic education of the children was not assured, the marriage was forbidden.²⁶

26 L. Örsy, "Mixed Marriages", in America, 117(1967), p. 243.

Likewise, Fr. B. O'Higgins notes that,

The claim that the promises are based upon divine law does not mean that appeal can be made to any scriptural statement of a relevant law, in the form of propositions, but rather to the revelation of the divine plan of salvation and of the place of the Church of Christ in that plan [...].²⁷

As an ordinary means of fulfilling the conditions imposed by the divine and natural laws, the Church demanded the promises - cautiones²⁸ - from one or both of the partners. Although these promises are merely ecclesiastical provisions, the Church claimed that they have their basis in divine and natural laws, since the former are a means of meeting the demands of the latter. The object of the promises is threefold: the integrity of the faith and the religious freedom of the Catholic partner, and the baptism and religious upbringing of the children in the Catholic

²⁷ B. O'Higgins, "Mixed Marriages: The 'Cautiones'", in ITQ, 41(1974), p. 281.

²⁸ The documents use, at times, conditiones, cautelae, and cautiones indiscriminately. Cautiones are sometimes referred to as promissiones, sponsiones, pacta, and patti. In general, however, conditiones and cautelae refer to the requirements imposed by divine and natural laws, and cautiones to the ecclesiastical prescriptions exacted as an ordinary means of fulfilling the conditions. It is from the conditiones that the Church cannot dispense. Thus, when some of the documents state that no one can dispense from the cautiones, what is really meant are the conditiones. See F. Wernz - P. Vidal, Ius Matrimoniale (1928), p. 192, footnote 31; G. Vromant, De Matrimonio (1938), pp. 131-132; M.C. Coronata, De Matrimonio et de Sacramentis (1957), pp. 328-329; F.M. Cappello, De Matrimonio (1961), p. 293.

faith. In order to ensure these better, and also to lead the non-Catholic from error to the true faith, the Catholic partner was at times even obliged to promise to strive for the conversion of his partner.

The manner in which these promises were exacted varied according to circumstances and situations. As each situation presented its own peculiar problem, a strictly uniform pattern could not be followed. In countries where civil authorities had enacted contrary legislation, the pattern had to be altered. Sometimes an oath was required in support of the promises; at other times, witnesses were needed to fortify them; ordinarily they had to be given in writing. In all cases, however, the insistence was the same: that the Catholic partner be granted religious freedom, and the Catholic upbringing of all children born of that union be guaranteed.

As a rule these promises were always required. Only with these did the Church feel that a mixed marriage became licit, and only after these promises would it allow its ministers to assist licitly at one of them. However, in the face of civil opposition to the promises, or in the face of other extraordinary circumstances, the Church was compelled to follow a compromising and tolerant path. In such difficult cases it had to rest assured that the requirements of the

divine and natural laws were met by means other than the formal promises.

Because of the serious nature and scope of these promises, the Church expected them to be made sincerely and seriously. The formalities and solemnities attached to these promises were to guarantee the sincerity and serious intent of the couple, all of which gave the dispensing superior moral certainty concerning their eventual faithful execution. This moral certainty, in turn, gave assurance that the conditions of the divine and natural laws were fulfilled in the case of a mixed marriage.

While the need of moral certainty concerning the fulfilment of the promises is insisted upon in many texts, the need of the present sincerity is mentioned explicitly only in three documents.²⁹ However, we must remember that these documents are dealing with the promises in the context of adverse civil legislation. Since the legislation was opposed to the making of the promises, there was reason to fear that the promises would not be sincere. Hence, emphasis was placed on the duty of the dispensing superior and on the couple, regarding the present sincerity and future fulfilment. To use these documents, or any of the above, to argue that

²⁹ See Gasparri, Fontes, IV, 973, p. 247; VII, 4894, pp. 470-471; VIII, 6455, p. 486.

present sincerity is required, or not required, for a dispensation³⁰ would be failing to take into account the whole historical background against which they emerged; it would be ignoring what they purported to do. The prescriptions contained in these documents can only be properly understood and correctly interpreted when they are taken in their particular context.

There seems to be no concern in these sources for such questions as the invalidity of a dispensation on account of the lack of the promises,³¹ or the invalidity of a

³⁰ For a list of authors who have used these documents for their arguments, see F.J. Schenk, Matrimonial Impediments, pp. 247-253; D.J. Boyle, The Juridic Effects of Moral Certitude on Pre-Nuptial Guarantees (1942), pp. 111-112; J. Hagan, Sincerity and the Pre-Nuptial Guarantees [1949], pp. 66-93, 109-114, 137-143, and passim; W.F. Allen, "The sincerity of the 'Cautiones' - Disparity of Worship", in The Jurist, 16(1956), pp. 72-75; B. Beck, De Cautionibus sincere praestandis in Matrimoniis quibus obstat Impedimentum Mixtae Religionis aut Disparitatis Cultus (1956), pp. 19, 37-38, 74-76; and passim; S.D. Lourdasamy, Pre-Nuptial Guarantees According to the Jurisprudence of the Holy Office (1959), pp. 155-152.

³¹ The response of the Holy Office, dated June 21, 1912, stated, for the first time, that the promises were required for the validity of a dispensation in mixed marriages. See Gasparri, Fontes, IV, 1293, p. 558.

dispensation on account of insincere or fictitious promises.³² The question of the validity of a dispensation was not the most vexing concern for the Church in the eighteenth and nineteenth centuries. These were trying and difficult years for the Church; it was a period which required progressive compromise, tolerance, and understanding in order to avoid greater evil and scandal. The Church had to face the ever-increasing problem of mixed marriages, entered into with and without dispensations, and officiated at by Protestant ministers and even civil magistrates; it had to deal with the growing opposition of the civil authorities to its legislation on mixed marriages. Its main concern, in this particular situation, was for the faith of the Catholic and the religious upbringing of the children in the Catholic faith. The Church was forced to find ways in which it could, without violating the divine and natural laws, permit licit celebration of a mixed marriage, and also to allow its ministers to assist licitly at such a ceremony.

³² Among the pre-Code authors, we find only three who considered the sincerity in its relation to the validity of a dispensation. E.P. Van De Burgt, Tractatus de Matrimonio, editio secunda, Ultrajecti, J.R. Van Rossum, 1875, p. 285, and A. Vermeersch, "Quaesita Varia - Casus Sinensis de Cautio-nibus", in Periodica, 7(1914), Supplementa, p. 2, expressed the opinion that sincere promises are required for the validity of a dispensation. In reply to a proposed doubt, an Anonymous author, "Questions de sciences ecclésiastiques", in L'Ami du Clergé, 33(1911), pp. 910-911, expressed the view that a dispensation would be valid even if the promises were given insincerely.

With the background of the foregoing analysis and conclusions based on it, we can now examine the notion of sincerity to be found in the legislation of Canon 1061.

CHAPTER II

LEGISLATION OF CANON 1061

The over-all purpose and scope of the Codex Iuris Canonici was described by Pope Pius X, in his Motu Proprio, Arduum Sane Munus, of March 19, 1904. The purpose was to bring together the laws of the Universal Church, and to arrange them in an orderly manner, eliminating obsolete and abolished ones, and adjusting the rest, wherever necessary, to current circumstances.¹ Thus, the primary purpose of the codification, according to the Pope, was to collect and systematize the legislation of the Church, which, until that time, was spread over a vast variety and number of documents.

In accordance with this plan, and within the general frame-work of the CIC,² the laws of the Church governing

1 "[...] At illustres Ecclesiae Praesules [...] magnopere flagitarunt ut universae Ecclesiae leges, ad hoc usque tempora editae, lucido ordine digestae, in unum colligerentur, amotis indeque quae abrogatae essent aut obsoletae, aliis, ubi opus fuerit, ad nostrorum temporum conditionem propius aptatis; [...]" in Acta Sanctae Sedis, 36(1904), p. 550.

2 See Pope Pius X, Motu Proprio, Arduum Sane Munus, pp. 549-551; P. Gasparri, "Storia della codificazione del diritto canonico per la chiesa latina", in Acta Congressus Iuridici Internationalis VII Saeculo A Decretalibus Gregorii IX Et XIV A Codice Iustiniano Promulgatis Romae 12-17 Novembris 1934, Volumen Quartum, Romae, Apud Custodiam Libreriam Pont. Instituti Utriusque Iuris, 1937, pp. 1-10; S. Kuttner, "The Code of Canon Law in Historical Perspective", in The Jurist, 28(1968), pp. 129-148.

mixed marriages also found a unified formulation and arrangement, mainly in the legislation of Canons 1060-1064, and 1070-1071. These canons represented a concise summary of the common teaching and consistent practice of the Church regarding mixed marriages. Prescriptions contained in Papal documents and Curial instructions and responses, even directed to the particular needs of a country, were brought together, unified and ordered in such a way as to serve as universal laws to govern all mixed marriages.

The mixed-marriage legislation in the CIC reflected the Church's prohibitive attitude throughout history toward these unions. It stated explicitly that such unions are forbidden by divine law itself, if they placed the faith of the Catholic partner and of the children in jeopardy (Canon 1060). The legislation expressed the Church's concern for and vigilance over those who enter into them. It also restated, with emphasis, the measures the Church always imposed in order to eliminate the dangers involved in such marriages. We intend to concern ourselves here particularly with these measures, promises - cautiones - prescribed by the Church in Canon 1061 as the ordinary means of eliminating the dangers involved in mixed marriages. More particularly, our interest here is in the element of sincerity to be found in these promises.

The legislation of Canon 1061, faithfully reflecting its immediate sources, substantially repeated the former laws on the promises, but with some modifications. It states that the Church does not grant a dispensation from the matrimonial impediments of mixed religion and disparity of worship³ unless:

1. there are just and grave reasons;

2. the non-Catholic promises to remove the dangers to the faith of his Catholic partner; and both promise to baptize and bring up all their children exclusively in the Catholic faith;

3. there is moral certitude concerning the fulfilment of the promises.

The legislation also required that these promises, as a rule, be in writing.⁴

The two promises express very clearly and adequately the deep concern of the Church, manifested through its history, for the faith of the Catholic and the baptism and upbringing of the children of mixed marriages in the Catholic

3 Legislation regarding the promises is the same for the impediments of mixed religion and disparity of worship. See Canon 1071.

4 Canon 1061: § 1. Ecclesia super impedimento mixtae religionis non dispensat, nisi: 1.º Urgeant iustae ac graves causae; 2.º Cautionem praestiterit coniux acatholicus de amovendo a coniuge catholico perversionis periculo, et uterque coniux de universa prole catholice tantum baptizanda et educanda; 3.º Moralis habeatur certitudo de cautionum implemento. § 2. Cautiones regulariter in scriptis exigantur".

faith. In order to safeguard the faith of his Catholic partner, the non-Catholic is required to assume an obligation; while according to most sources this obligation was undertaken in the past mainly through a promise not to interfere with the faith and religious practice of his partner, with the legislation in the CIC it is to be undertaken through a promise embodying a positive act, a personal obligation, to remove whatever might endanger the faith of his Catholic consort.⁵ The obligation of the Catholic himself to persevere in his faith, mentioned in some of the sources, is not stated explicitly in the new universal law.

The second promise was to guarantee the baptism and upbringing in the Catholic faith of all children to be born of the union. To this end both partners were required to make the promise. There seems to have been nothing really new in this requirement.⁶ This and the previous one were referred

⁵ See J. Petrovits, The New Church Law on Matrimony (1921), p. 117.

⁶ We cannot agree totally with the authors who claim that this explicit promise from both partners is something new in the legislation of Canon 1061. According to them the pre-Code laws demanded an explicit promise only from the non-Catholic partner; the intention of the Catholic to baptize and bring up the children in the Catholic faith was presumed. See, for example, J. Petrovits, The New Church Law on Matrimony, pp. 117-118; F.J. Schenk, Matrimonial Impediments, pp. 236-237; S.D. Lourdusamy, Pre-Nuptial Guarantees, p. 61.

to as being founded on divine and natural laws.⁷ According to the particular nature and scope of the documents, they emphasized sometimes the obligation of the Catholic, and at other times of the non-Catholic, but most often spoke of the obligations incumbent on both partners.

The previous legislation generally attached to the promises various formalities and solemnities, like writing, oaths, and witnesses, as a means of ensuring the sincerity of those making them and their serious intent to carry them out. Such formalities provided the Church with moral certainty that the promises would be kept, and, consequently, the conditions of the divine and natural laws would also be met. Since these promises were said to have their basis in divine and natural laws, the necessity of moral certitude regarding their eventual fulfilment was recognized in most of the sources. The legislation of Canon 1061, dropping all the formalities attached to the promises, simply stated that the dispensing superior should have moral certainty concerning

7 "Cum saltem duae memoratae conditiones iuri naturali et divino ex iudicio prudenti debeant esse in tuto collocatae, R. Pontifices in concedenda dispensatione super hoc impedimento constanter iubebant exigere diversis formis veras et opportunas cautiones de praestandis conditionibus essentialibus id est tales promissiones et assecurationes quae praebent morale fundamentum iudicii practici prudenter expectari posse executionem illarum essentialium conditionum", in F. Wernz - P. Vidal, Ius Matrimoniale, pp. 192-194.

their fulfilment. No specific form of exacting or giving the promises is determined, except a general preference that they be in writing.

Although the legislation in the sources generally required the Catholic to strive for the conversion of his partner, from the over-all tenor, intent and purpose of the documents, it appears that this obligation was not placed on the same level as the other two, having their basis in divine and natural laws. Hence the sources themselves place differing emphases on this obligation of the Catholic. The Church was not so much concerned with the conversion of the non-Catholic as it was with the faith of the Catholic and the baptism and upbringing of the children in the Catholic faith. The legislation in the CIC had separated this obligation of the Catholic from the formal promises required for dispensation. Canon 1062 describes this obligation as one to be undertaken by the Catholic in charity and prudence.⁸ Likewise, the promise occasionally demanded from the couple that they would not seek a non-Catholic minister to bless their marriage is also dropped as a requirement for dispensation. This aspect

⁸ Canon 1062: "Coniux catholicus obligatione tenetur conversionem coniugis acatholici prudenter curandi".

of the mixed marriage is legislated in Canon 1063.⁹

The foregoing brief analysis of Canon 1061, and especially of the promises embodied in it, brings us to the question of the relevance and significance of sincerity in these promises. However, the first most obvious feature we note in Canon 1061 is that there is no explicit mention of sincerity at all. The partners to a mixed marriage are required to make the two promises, and the dispensing superior is required to have moral certitude regarding their eventual fulfilment. No mention is made of the actual sincerity of the couple making the promises, nor of the moral certitude, on the part of the dispensing superior, concerning the present sincerity of the promises. What, then, is the significance of sincerity, if any, according to the legislation of Canon 1061? In the following pages we intend to study this question.

The silence of Canon 1061 on the present sincerity has been considered to be insignificant by some authors, because the legislation repeats substantially the pre-Code laws on the promises. They argue that the legislation of

⁹ Canon 1063, § 1. "Etsi ab Ecclesia obtenta sit dispensatio super impedimento mixtae religionis, coniuges nequeunt, vel ante vel post matrimonium coram Ecclesia initum, adire quoque, sive per se sive per procuratorem, ministrum acatholicum uti sacris addictum, ad matrimonialem consensum praestandum vel renovandum".

Canon 1061 does not introduce any departure from the previous law requiring present sincerity. In support of their contention, they invoke Canon 6. Thus, for example, F.J. Schenk states that,

Canon 1061, § 1, n. 3 does not explicitly contain the requirement of a moral certainty as to the sincerity at the time they are given, yet, since the law in this regard appears to be the same as it was in the law before the Code, there seems to be no significance in the silence of the canon. By virtue of canon 6, nn. 2, 4, this requirement is to be regarded as still remaining in force.¹⁰

Likewise, D.J. Boyle makes the following observation:

The silence of the Code in this matter has no telling significance. Nor can canon 6 be advanced to challenge this contention. Number 6 of canon 6 which may appear to threaten this stand, can, on closer scrutiny, be advanced rather in support of the retention of the pre-Code clause than for its rejection. Moral certitude of the fulfillment of the cautiones necessarily includes in it a moral certitude of the present sincerity of the parties who furnish the cautiones. Hence the pre-Code clause is implicitly contained in canon 1061, § 1, 3^o.¹¹

Indeed, a number of pre-Code documents containing legislation on mixed marriages -- some mentioned as sources

¹⁰ F.J. Schenk, Matrimonial Impediments, p. 249, footnote, 154.

¹¹ D.J. Boyle, The Juridic Effects of Moral Certitude, pp. 94-95.

of Canon 1061, others not mentioned --¹² made explicit the need of present sincerity on the part of those making the promises, and also moral certitude of it on the part of the dispensing superior. But, still a larger number of sources did not contain any such explicit clause. Hence, in trying to relate the legislation of Canon 1061 to the pre-Code law, we must admit, at the very outset, that, in the documentary sources of Canon 1061 as indicated in the Fontes, there is no uniform prescription, "pre-Code clause", requiring explicitly the present sincerity on the part of those making the promises nor of its moral certitude on the part of the dispensing superior. As a matter of fact, there is no single pre-Code document which contains all the elements of Canon 1061 as expressed therein.

The fact that the need of actual, present sincerity was not mentioned explicitly in the majority of the sources in no way implies that the Church was satisfied with promises which were not sincere. The contrary is true. The Church expected these promises to be made sincerely; it expected

¹² See Gasparri, Fontes, IV, 973, p. 247; VII, 4894, pp. 470-471; VIII, 6455, p. 486. One document not mentioned among the sources, but cited by many authors is the response of the S.C. Holy Office to the Primate-Archbishop of Hungary, dated July 21, 1880: " ... Ut superior ecclesiasticus moralem certitudinem habeat sive de cautionum sinceritate pro praesenti, sive de earundem adimplemento pro futuro", in NRT, 19(1887), p. 7.

them to be faithfully carried out; it even instructed some bishops not to grant dispensations when the present sincerity was in doubt and when moral certainty regarding the eventual fulfilment of the promises was lacking;¹³ it attached to the promises formalities and solemnities to ascertain their sincerity, seriousness, and faithful execution. The Church viewed these promises as the ordinary means through which it could rest assured that the demands of divine and natural laws were met, and, consequently, it could permit the licit celebration of a mixed marriage. What we should like to emphasize here is the fact that the relevance and significance of sincerity in the promises cannot and should not be examined solely in the light of a few select documents in which it is mentioned explicitly, but in the light of the sources in general, considered together in their historical setting.

Our brief analysis of the sources led us to the conclusion that the Church certainly expected the promises to be sincere and that they would be carried out faithfully. This was so, because the sources contained not only legislation but also its reason, ratio legis, its theological justification, and also its historical setting. These

¹³ See Gasparri, Fontes, IV, 973, p. 247; IV, 1064, p. 383; VII, 4894, pp. 470-471.

documents, together, bore witness to the Church's continuing effort to adapt its legislation on mixed marriages to various places and conditions. They represented the day-to-day life of a Christian community in various places, and the prescriptions in these documents were not divorced entirely from the concrete life situations from which they emerged. Such close links between law and the ratio legis, its history, purpose and motive renders its understanding and interpretation proper and its application fair.

On the contrary, the Church's mixed marriage legislation, previously scattered over a number of documents, but now systematized, arranged, and concisely expressed in a few canons, as we have in the CIC, is slightly divorced from its historical setting, concrete life situation, and motive and purpose; the reasons for specific prescriptions are not stated explicitly; nor are all the prescriptions theologically justified. Hence arises the need of studying the legislation of Canon 1061, or any canon in the CIC, in relation to its

immediate sources.¹⁴

In order to examine the significance of sincerity in the promises prescribed by Canon 1061, we need to consider carefully the whole legislation, of which the question of sincerity is only a part. We must consider the underlying reasons for the legislation, its object, scope and purpose. The general conclusions we drew from our analysis of the sources¹⁵ are to be kept in mind in this consideration.

While Canon 1061 formulates the ordinary means prescribed by the Church to eliminate the dangers intrinsic to

¹⁴ S. Kuttner describes this particular feature of the CIC thus: "[...] Placing the accent on historical continuity as he did, Gasparri and his collaborators were clearly conscious of the historical dimension of the canonical rules and doctrines which they sought to restate in the more modern vesture of a new code. Nonetheless, we must emphasize the fact that, with the promulgation of the Code, all texts of the earlier law lost their formal character as "laws" -- even where in substance they continue to govern present-day discipline in the form of the new canons. In other words, they became instruments of interpretation -- certainly the most authoritative, but only so because of the legal force of the canons of the Code, no longer binding themselves. For this reason the volumes of the Codicis Iuris Canonici Fontes always remain a private collection. We have here an almost paradoxical fact: the Code, although it preserved in substance a great part of earlier legislation, nonetheless inevitably led to a sharp division between history and law -- much more so than had ever been the case in the past. In the course of the Church's history no legislation had ever been enacted which completely absorbed all preceding discipline and formally abolished all earlier collections. The Codex was the first to do this; as a result -- though certainly not intended -- history became divorced from present-day law", in "The Code of Canon Law in Historical Perspective", p. 139.

¹⁵ See above pp. 23-30.

mixed marriages in general, it implies the theological pre-supposition and principle that the Church cannot permit the licit celebration of a mixed marriage before provisions are made for the integrity and protection of the faith of the Catholic partner and for the baptism and upbringing of the children in the Catholic faith.¹⁶ Thus, although most of the formalities attached to the promises, in the legislation contained in the sources, are omitted in Canon 1061, the substance of the legislation remains the same; the object of the legislation, ratio legis, too, remains the same.¹⁷

Through this legislation, the Church expected to achieve the same ends as through its previous laws: the protection of

16 "[...] Ut haec rite intelligantur, recolimus Ecclesiam omnino non posse dispensationem in mixto coniugio concedere, nisi certa moraliter sit prohibitionem iuris naturalis in casu cessavisse. [...] Exinde intelligitur quo sensu haec duplex formalis promissio sit de iure naturali et divino, scilicet quatenus est necessaria ad habendam moralem certitudinem de cessatione prohibentis iuris naturalis et divini", in P. Gasparri, De Matrimonio (1932), Vol. I, p. 265.

17 "Cum saltem duae memoratae conditiones iuris naturalis et divini ex iudicio prudenti debeant esse in tuto collocatae, R. Pontifices [...] iuebant exigere diversis formis veras et opportunas cautiones [...] id est tales promissiones et assecurationes [...] Huc spectant pacta et promissa scripto vel coram testibus, imo etiam coram notario et cum interpositione iuramenti facta. Quae praescriptiones iuris praecedentis in particularibus documentis aut in responsis SS. CC. contenti in can. 1061 illam acceperunt iuris communis sanctionem, ut cautiones omnino sint exigendae antequam petatur et concedatur dispensatio, et ut praeterea ita exigantur atque in talibus circumstantiis dentur, ut moralis habeatur certitudo de ipsarum implemento", in F. Wernz - P. Vidal, Ius Matrimoniale, pp. 192-195.

the faith of the Catholic and the guarantee for the religious upbringing of the children in the Catholic faith.

As we saw in the previous chapter, many of the sources insisted that the promises are based on divine and natural laws, and that they are related to them at least indirectly, since they are the ordinary means employed to meet their demands. This is why the Church consistently demanded these promises in ordinary circumstances; this is why it expected their eventual faithful execution. In order to rest assured that the conditions of divine and natural laws are duly fulfilled, it needs to have moral certainty regarding the efficacy of the means prescribed. It often referred to these means as verae et opportunaes cautiones. And it described this means as a promise, made or drawn up in the form of a pact or an agreement to produce the moral basis for a prudent judgement concerning the truth of its fulfilment.¹⁸

The Church's concern, then, with sincerity in the promises as well as with moral certitude regarding their eventual fulfilment seems to be rooted on the same theological presupposition: the promises are the ordinary means prescribed by the Church to fulfil the conditions imposed by divine and natural laws on every mixed marriage; they are a

¹⁸ See Gasparri, Fontes, IV, 890, p. 167.

means of ascertaining, as far as possible, that the prohibition of divine and natural laws has ceased in the case of a given mixed marriage, and, consequently, the Church can permit the licit celebration of a mixed marriage.¹⁹

In the light of the above theological and juridical principles governing mixed marriages, the silence of Canon 1061 on the need of sincerity does not seem to have any significant bearing. Although the legislation does not mention explicitly the need of sincerity, it makes explicit demand of moral certitude concerning the fulfilment of the promises. The actual, present sincerity of those making the promises would seem to be the logical and real basis of moral certitude concerning their eventual faithful execution. Hence, some authors have considered the former as very much part of the latter, one deriving from the other:

¹⁹ See J. Chelodi, Ius Matrimoniale (1921), pp. 59, 83-84; G.H. O'Keeffe, Matrimonial Dispensations (1927), p. 84; F. Wernz - P. Vidal, Ius Matrimoniale, pp. 192-195; P. Gasparri, De Matrimonio, Vol. I, p. 265; F. Ter Haar, Mixed Marriages and their Remedies, pp. 81-89; G. Payen, De Matrimonio in Missionibus (1935-1936), Vol. I, pp. 650, 835.

Moral certitude of the fulfillment of the cautiones necessarily includes in it a moral certitude of the present sincerity of the parties who furnish the cautiones. [...] In the very nature of things one could hardly be said to be morally certain of the future fulfillment of a promise when he lacks such certitude of the present sincerity of those making the promise. The former is very much part of the latter. [...] what assurance can a bishop who dispenses have of the future fulfillment of the cautiones, regardless of external factors, if he cannot assure himself that the parties themselves are sincere in their promises?²⁰

Many more authors, however, without even mentioning the silence of the Canon regarding sincerity, comment on moral certitude regarding the present sincerity as they comment on moral certitude concerning the fulfillment of the promises.²¹

²⁰ D.J. Boyle, The Juridic Effects of Moral Certitude, pp. 94-95.

²¹ "Haec moralis certitudo non habetur, nisi ex formali promissione partis acatholicae de relinquenda parti catholicae plena libertate in exercitio suae religionis et promissione utriusque partis de universa prole in sola catholica religione baptizanda et educanda, ita ut de huius promissionis sinceritate in praesenti et de eius executione in futuro dubitari, omnibus perpensis, nequeat; [...]" in P. Gasparri, De Matrimonio, Vol. I, p. 265. "Non potest procedi ad dispensationem et matrimonii celebrationem nisi rite constet de observantia conditionum. Quare cautiones non solum iniungi, sed exigi omnino debent, et ita quidem praestandae a nupturientibus, ut Superior ecclesiasticus non meram probabilitatem aut spem aliquam habeat, sed moralem certitudinem sive de cautionum sinceritate pro praesenti sive de earundem adimplemento pro futuro; nec ulla ratione fieri potest ut coniectura aut spes quae unice in bona voluntatis contrahentium dispositione fundatur, locum requisitarum cautionum tenere valeat", in F.M. Cappello, De Matrimonio, p. 294. See also A. Blat, De Sacramentis (1924),

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Before concluding our examination of the notion and significance of sincerity in the promises, as embodied in Canon 1061, we should like to mention another aspect of this sincerity, namely, its juridical relationship to the dispensation. It is quite possible that the promises are made sincerely by the couple, but the dispensing superior does not feel morally certain that they would be fulfilled; the contrary is also possible, namely, the promises are not sincere, but unaware of that, the dispensing superior feels morally certain that they would be fulfilled, and grants a dispensation.

The first of the above hypotheses does not seem to present great difficulty. If the dispensing superior does not feel morally certain of the fulfilment of the promises, he cannot grant the dispensation:

21 (cont'd) p. 560; F. Ter Haar, Mixed Marriages and their Remedies, p. 94; G. Payen, De Matrimonio in Missionibus, Vol. I, pp. 654-655; A. Sabetti - T. Barrett, Compendium Theologiae Moralis, Editio Tricesima quarta, Cincinnati, Frederick Pustet, 1939, p. 873; J. Chelodi - P. Ciprotti, Ius Canonicum de Matrimonio (1947), p. 69; M. Th. Vlaming - L. Bender, Praelectiones Iuris Matrimonii (1950), p. 148; M.C. Coronata, De Matrimonio et de Sacramentis, p. 337.

This moral certainty is demanded for the validity of the dispensation itself. This is clear law. Even in the presence of good faith on the part of the spouses themselves, the dispensation would be invalid if the dispensing power lacked the required moral certainty of their fulfillment.²²

As far as the second hypothesis is concerned, authors agree, in general, that if the insincerity is known prior to the granting of a dispensation, the dispensation should be denied.²³ But, if the insincerity of those making the promises is known only after the dispensation has been granted,²⁴ and after the marriage has been celebrated, would this recognized insincerity invalidate the dispensation, and also

²² R.J. White, Canonical Ante-Nuptial Promises (1934), p. 38. See also F. Ter Haar, Mixed Marriages and their Remedies, p. 94; F.M. Cappello, De Matrimonio, p. 294.

²³ "Should the indication show that their [promises] fulfillment is impossible under the contemplated circumstances, or should the insincerity of one or both contracting parties be apparent, the persons in question could not be considered worthy applicants for a dispensation", in J. Petrovits, The New Church Law on Matrimony, p. 118. "[...] If such insincerity be brought to light before the time when the dispensation is to be granted, then the dispensation must be refused, for the required moral certitude in such a case can certainly not be said to exist", in D.J. Boyle, The Juridic Effects of Moral Certitude, p. 147. See also R.W. O'Brien, "The Sincerity of Pre-Marital Promises", in AER, 135(1956), pp. 59-60; M.C. Coronata, De Matrimonio et de Sacramentis, p. 339; H.A. Ayrinhac - P.J. Lydon, Marriage Legislation in the New Code of Canon Law (1959), p. 107.

²⁴ D.J. Boyle is of the opinion that, if the insincerity is known after the dispensation has been granted but before the celebration of the marriage, the marriage should be delayed. See The Juridic Effects of Moral Certitude, pp. 147-148.

the marriage if it involved the diriment impediment of disparity of worship? Quite simply, the question is whether or not sincerity is a condition for dispensation; or negatively, whether or not insincere promises invalidate a dispensation.

The question of the relationship between the sincerity of the promises and the validity of a dispensation has been one of the most disputed among canonists. As of 1920, authors were divided sharply on the matter, a good many, arguing in favour of the validity of the dispensation, and an equally good number arguing against the validity.²⁵

Proponents of both views advanced supporting arguments from pre-Code documents, legislation in the CIC, nature, meaning, and purpose of the promises, post-Code legislation, and Rotal jurisprudence.

Proponents of the former view argued that in no Papal or Curial document is it stated explicitly that sincerity is required for the validity of the dispensation. Hence, as long as the promises are exacted and given, and as long as the dispensing superior has moral certitude regarding their

²⁵ A list of authors who shared one or the other view is found in D.J. Boyle, The Juridic Effects of Moral Certitude, pp. 96-97, footnote 20, p. 101, footnote 32; J. Hagan, Sincerity and the Pre-Nuptial Guarantees, pp. 61-65; N.J. Kelly, "Insincere 'Cautiones' in the light of Recent Rotal Decisions", in The Jurist, 13(1953), pp. 35-36; B. Beck, De Cautionibus sincere Praestandis, pp. 6, 25-26; S.D. Lourdasamy, Pre-Nuptial Guarantees, pp. 137-139.

fulfilment, the conditions for the dispensations are met. The sincerity or the actual good faith of those making the promises does not affect the dispensation; if they give insincere or fictitious promises, they are of course guilty, but the dispensation is not rendered null by that. Moreover, it is difficult to conceive that the Church would make the validity of a dispensation, and much less a marriage, hinge on such a vague and purely subjective element as sincerity which can hardly be ascertained in the external forum. Again, requiring sincerity as an essential element of the promises, cautiones, would, in reality, amount to a juridical absurdity, because the very purpose of these cautiones is to protect against insincerity. Finally, there are at least two decisions of the S. R. Rota, upholding the validity of the dispensation in spite of the insincerity of the promises.

Proponents of the latter view argued that although no documents state explicitly that sincerity is required for the validity of the dispensation, it is certainly implied in them. There are, indeed, documents which mention explicitly the need of the sincerity in the promises. Moreover, moral certitude of the dispensing superior regarding the eventual fulfilment of the promises is a prudential judgement arrived at on the presumption that those making the promises are acting in good faith and sincerity hic et nunc. Every promise is presumed

to be a sincere promise. The general juridical presumption in rescripts that the petition is founded on truth - si preces veritate nitantur - is applicable also to the question of sincerity in the promises. Because a promise consists of an actual willingness to assume and carry out an obligation, wherever this willingness is lacking, no real promise exists. Hence, insincere promises are no promises at all. The very insistence of the Church on the promises in all ordinary circumstances and on the need of moral certitude, on the part of the dispensing superior, regarding their eventual fulfillment, is clear evidence that the Church expects true and sincere promises - verae et opportunaes cautiones. It even defined this cautio opportuna as a promise, made or drawn up in the form of a pact or an agreement to provide the moral basis for the prudent judgement on the truth of its eventual execution. Again, the Church's consistently prohibitive attitude toward mixed marriages and its severe and strict legislation governing them are sufficient evidence and indication that it requires sincere promises. These promises are the ordinary means prescribed by the Church to fulfil the conditions of divine and natural laws imposed on mixed marriages in general. The Church cannot permit the licit celebration of a mixed marriage unless and until it is morally certain that the conditions of divine and natural laws are

met, that the danger to the faith of the Catholic is eliminated or at least made remote, and the baptism and upbringing of the children in the Catholic faith are guaranteed. Insincere promises can hardly be considered to be the proper and effective means to fulfil these conditions. Finally, it would, indeed, seem contrary to the whole purpose and spirit of the legislation that the Church would grant a valid dispensation from the matrimonial impediments of mixed religion and disparity of worship without, at the same time, attending to the veracity and sincerity of the promises.

The very controversy over the need of sincerity for the validity of the dispensation has itself been the subject of serious studies. In addition to numerous periodical articles and sections of larger related works,²⁶ there are at least two book-length studies entirely devoted to this

²⁶ Brief summary and synthesis of the arguments advanced by both sides of the controversy is found in: D.J. Boyle, The Juridic Effects of Moral Certitude, pp. 96-113; W. F. Allen, "The Insincerity of the 'Cautiones'", pp. 73-75; S.D. Lourdusamy, Pre-Nuptial Guarantees, pp. 140-145.

controversy.²⁷ These studies contain critical reviews and syntheses of the arguments advanced by proponents of both views. Since the findings of these studies are readily available, we do not intend here to carry on our examination of this aspect of the sincerity any further. For all practical purposes, the controversy was settled by 1951 in the light of some responses from the S. C. Holy Office, indirectly touching on the matter, and more directly through the jurisprudence of the S. R. Rota. The examination of these responses and other post-Code legislation as well as the jurisprudence of the Rota is the subject matter of our next chapters.

27 J. Hagan, Sincerity and Pre-Nuptial Guarantees (unpublished doctoral dissertation, ii-183 pp.) contains a brief historical survey of the development of the cautiones, and a critical analysis and presentation of the arguments advanced by both sides of the controversy. His own conclusion that sincerity is required for the validity of a dispensation is based mainly: (1) on the contention that the pre-Code law required sincerity for the validity of a dispensation, and since Canon 1061 contains substantially the same legislation, Canon 6, n. 2 is applicable; (2) on the response of the S. C. Holy Office, dated May 10, 1941; and (3) on the affirmative Rotal sentence, coram Brennan, dated January 26, 1948. B. Beck, De Cautionibus sincere Prae-standis (also a doctoral dissertation, but published, xi-117 pp) presents the arguments advanced by both sides. He too arrives at the conclusion that sincerity is required for the validity of a dispensation. His conclusion, however, is drawn from a broader basis. He argues from the attitude of the Church toward mixed marriages in general, and toward the promises in particular; from the history and nature of the promises; from the pre-Code and post-Code responses and instructions of the Holy See; and from the jurisprudence of the S. R. Rota.

CHAPTER III

POST-CODE LEGISLATION

The numerous documents issued by the Holy See subsequent to the CIC can be classified into four major groups: (1) those affirming the necessity of the promises from both partners, in ordinary circumstances, for a valid dispensation; (2) those establishing the manner of exacting the promises in order to ensure that their subsequent fulfilment would not be impeded; (3) those interpreting the extent of the promise regarding the baptism and upbringing of all the children in the Catholic faith; and (4) those making provisions for particular pastoral needs in China, the Minor Sunda Islands, and Japan.

(1) Necessity of the Promises.

In a series of responses, the S. C. of the Holy Office stated that, in ordinary circumstances, the promises from both partners are required for the valid granting of a dispensation, and also that priests could not assist licitly at a mixed marriage, if the necessary dispensation had not

been obtained.¹ One of these responses calls for particular consideration here. To a doubt regarding the invalidity of a dispensation and the declaration of nullity of a marriage, if only the non-Catholic made the promises, the Holy Office, on May 10, 1941, replied affirmatively. This reply seems to add a new element for the understanding of the importance of sincerity in the promises. After stating that the dispensation was invalid unless the Catholic partner also made the promises, at least implicitly, it explains the mind of the Holy Office regarding the formal promises, indicating, at the same time, that implicit promises would be sufficient for the validity of a dispensation:

¹ See Replies of the Holy Office: to the Archbishop of Prague, dated November 26, 1919, in C. Sartori - B.I. Belluco, Enchiridion Canonicum (1963), p. 295; to the Bishop of Zagreb, dated July 6, 1929, in C. Sartori, Enchiridion Canonicum, p. 296; to the Prefect Apostolic of Peng Yang, dated June 8, 1932, in Sylloge (1939), 172, pp. 442-443.

The mind of the Sacred Congregation is: although the Holy See has from time immemorial required, and now strictly requires that in all mixed marriages the fulfilment of the conditions be safeguarded by a formal promise explicitly demanded and given by both partners (ca. 1061, 1071), still the use of the faculty to dispense, whether ordinary or delegated, cannot be called invalid if both partners at least implicitly gave the promises, that is, if they placed acts from which it could be concluded and proved in the external forum that they were conscious of their duty to fulfil the conditions, and that they manifested a firm purpose to perform that duty.²

The latter part of this statement contains a description of an implicit promise. According to the Holy Office, not any promise would be sufficient for the validity of a dispensation; but both partners must place acts from which it could be construed in the external forum that they were aware of their obligation to fulfil the conditions, and also that they manifested their firm determination to perform that duty.

Although no specific mention of sincerity is made in this reply, the emphasis on the need of the fulfilment of the conditions, presumably of divine and natural laws, and on the external manifestation by the partners of their firm determination to carry out this obligation would certainly

2 "[...] Mens autem est: [...] usus facultatis dispensandi, sive ordinariae sive delegatae, invalidus dici nequit si utraque pars saltem implicite cautiones praestiterit, i.e., eos actus posuerit e quibus concludendum sit et in foro externo constare possit eam cognoscere obligationem adimplendi condiciones et manifestasse firmum propositum illi obligationi satisfaciendi [...]" in AAS, 33(1941), pp. 294-295.

indicate that these promises are expected to be true and sincere. What is to be manifested externally is the awareness of the obligation on the part of the couple and also their firm resolve to carry it out. If the awareness and determination are lacking, their external manifestation does not seem, in the mind of the Holy Office, to be sufficient for the fulfilment of the conditions. Some authors have argued from this reply that insincere promises would invalidate a dispensation.³ Also two Rotal decisions declaring nullity of a marriage on the ground of insincere promises have drawn arguments from it.⁴

(2) Manner of Exacting the Promises.

In order to ensure more effectively the fulfilment of the promises, the Holy Office issued a decree on January 14, 1932. It ruled that dispensations from the impediment of mixed religion and disparity of worship could not be granted validly, unless the promises were made in such a way that

³ See, for example, J. Hagan, Sincerity and the Pre-Nuptial Guarantees, p. 150; B. Beck, De Cautionibus sincere Praestandis, pp. 38-39, 73; S.D. Lourdusamy, Pre-Nuptial Guarantees, pp. 161-165. For a detailed commentary on this reply, see J. Creusen, "Annotationes", in Periodica, 30(1941), pp. 319-326.

⁴ See S. R. R. Decisiones, 43(1961), c. Felici, pp. 261-262, No. 34; 44(1962), c. Brennan, p. 131, No. 20.

nobody could impede their fulfilment, even by recourse to civil laws to which either partner was subject and which were in force in their actual place of residence or in the place where they intended to move. In other words, if the fulfilment of the promises can be better assured, when they are given also a legal status, then the Church requires the promises to be made in such a way as to acquire that status.

This decree seems to underline a number of points relating to the promises: the promises are of great importance in the eyes of the Church; they touch upon divine and natural laws; the partners to a mixed marriage have the grave obligation to carry them out; and, finally, there is need of moral certitude on the part of the dispensing superior regarding the subsequent fulfilment of the promises.⁵ The decree, with its severe tone and serious content, occasioned a great deal of concern and anxiety as to its intent and purpose. It became the subject matter of many short and long

⁵ [...] Ne lex tam gravis, naturalis ac divini iuris, magno cum innocentium animarum detrimento, frustrata maneat, [...] qui super mixtae religionis ac disparis cultus impedimentis dispensandi facultate aucti sunt, attentionem excitare et conscientiam convenire, ne dispensationes huiusmodi unquam impertiantur, nisi praestitis antea a nupturientibus cautionibus, quarum fidelem executionem, etiam vi legum civilium, quibus alteruter subiectus sit, vigentium in loco actualis vel (si forte alio discessuri praevideantur) futurae eorum commorationis, nemo praepedire valeat, secus ipsa dispensatio sit prorsus nulla et invalida", in AAS, 24(1932), p. 25.

works.⁶ It was even seen by at least two writers as implying that the good faith or sincerity of the partners is required for the validity of a dispensation.⁷ In two subsequent responses, the Holy Office indicated that this decree did not alter the situation in countries where civil laws did not recognize the binding force of the promises, even if they were drawn up with due observance of the formalities required by civil legislation.⁸ In these countries the Church was satisfied with the formalities prescribed by the legislation in the CIC.

6 See, for example, P. Bernardini, "The Decree of the Holy Office respecting Ante-Nuptial Agreements in Mixed Marriages", in ER, 88(1933), pp. 185-190; F.M. Cappello, "Annotationes", in Periodica, 21(1932), pp. 100-105; E. Jombart, "Les promesses et garanties à exiger dans les mariages mixtes (Décret du 14 janvier 1932)", in NRT, 59(1932), pp. 363-366; W.I. Lonergan, "Church Laws on Mixed Marriages", in America, 47(1932), pp. 59-61; V.T. Schaaf, "In how far does the recent Decree regarding the Cautiones apply to the United States?", in ER, 86(1932), pp. 408-411; R.J. White, Canonical Ante-Nuptial Promises and the Civil Law (1934).

7 See W.I. Lonergan, "Church Laws on Mixed Marriages", pp. 60-61; L.P. Foley, "Sincerity of the Promises before Mixed Marriages", in HPR, 33(1933), p. 743.

8 See Replies of the Holy Office: to an Irish Bishop, dated August 4, 1932, and to the Ordinaries of several Vicariates in Nigeria and Cameroons, dated November 9, 1934, in X. Ochoa, Leges Ecclesiae post Codicem Iuris Canonici Editae (1966), Vol. I, nn. 1116, 1242.

(3) Extent of the Promises.

The second promise demanded by the legislation of Canon 1061 is that both partners to a mixed marriage see to the baptism and upbringing of all their children ("universa proles") exclusively in the Catholic faith. This promise was understood generally to include all children born of the union. However, in a number of post-Code documents, mainly granting Faculties to the Ordinaries to sanate mixed marriages, the promise was extended also to children already born ("tam natae quam nasciturae").⁹

The Holy Office was asked whether the legislation of Canon 1061 regarding the baptism and religious upbringing of the children meant to include only the children to be born or also the ones already born before the celebration of the marriage. In its decree of January 16, 1942, it replied that the promise included only the children born after the

⁹ See "Facultates pro locorum Ordinariis circa matrimonia mixta, Sabbato die 16 septembris 1922", in NRT, 50(1923), pp. 128-129; "[Communicatio Cardinalis Praefecti S. C. de Prop. Fide Ordinariis missionum, diei 2 jul. 1930]", in A. Wang, De Dispensatione super Impedimento Disparitatis Cultus maxime in Sinis (1951), pp. 11-12; "[Responsio S. C. de Prop. Fide ad Delegatum Apostolicum in Turcarum republica, 4 septembris 1931]", in V. Dalpiaz, "De sanatione in radice in matrimoniis mixtis", in C. Bernardini [et alii], Consultationes Iuris Canonici, Vol. II, Romae, Pont. Institutum Quinque Iuris, 1939, p. 170; "[Facultates ad locorum Ordinarios, die 1 Ianuarii 1941]", in X. Paventi, "Brevis Commentarius in Facultates S. C. de Prop. Fide", in CPR, 23(1942), p. 63.

celebration of the marriage. The decree, however, added that the couple should be reminded of their grave obligation, deriving from divine law, to provide also for the Catholic upbringing of the children already born.¹⁰

(4) Equivalent Promises.

The immediate historical background of the mixed marriage legislation in the CIC, as we saw earlier, was the plight of the Church in Europe in the post-Reformation period. The Church's attitude toward those who had separated themselves from the "one true fold", and its concern for the protection from error of those who remained loyal to it, account, to a great degree, for the severe tone and strictness of its legislation. Nevertheless, already in the period during which most of the pre-Code legislation on mixed marriages emerged, in order to avoid greater evil and further scandal, the Church had in certain circumstances mitigated

¹⁰ "[...] Et ad mentem; mens autem haec est: quamvis per se, ad normam praefati canonis, cautiones non exigantur de prole forte iam nata ante matrimonii celebrationem, omnino monendos esse nupturientes de gravi obligatione iuris divini curandi catholicam educationem etiam dictae prolis forte iam natae", in AAS, 34(1942), p. 22. For a detailed commentary on this decree, see J. Creusen, "Annotationes", in Periodica, 31(1942), pp. 176-183. On August 15, 1947, a communication from the S. C. for the Propagation of the Faith was sent to all the Ordinaries asking them to delete the phrase tam natae from the Formula of the Faculties. See C. Sartori, Iuris Missionarii Elementa, Romae, Secretaria Missionum Ord. Fr. Minorum, 1947, p. 114.

some of its strict demands. When the promises, in whatever form, could not be had from both partners, or even from the Catholic, the Church felt compelled to permit the celebration of a mixed marriage. In such situations, however, it ensured the fulfilment of divine and natural law obligations by reminding the partners, or at least the Catholic, of such obligations and their duty to fulfil them.¹¹

While the legislation in the CIC was to be applied universally, the Church, again, felt compelled to provide solutions for situations not contemplated in the general laws. In countries where Catholics were of extremely small number, and where the time-honoured customs of the people were in conflict with the legislation of the Church on mixed marriages, it had to provide guidance and directions for its missionaries. The apparent absoluteness and severity of the legislation regarding the promises confronted these missionaries with very difficult decisions. They had to decide whether to insist on the promises and even refuse dispensations with the effect that some Catholics would be forced to remain unmarried or to mitigate and modify the legislation to meet the pastoral needs. Under the circumstances, the Church felt compelled to re-examine and

¹¹ See Gasparri, Fontes, II, 497, pp. 788-791, above pp. 12-13.

re-formulate the substance of its legislation whereby its purpose could be achieved without insistence on all the formalities the Church itself had imposed. Out of such trying concrete pastoral realities emerged what came to be known as the "equivalent promises" (cautiones aequipollentes).

Because of particular circumstances and situations in China, the Minor Sunda Islands, and Japan, the Holy See instructed the Ordinaries there that, when it was impossible or not expedient to obtain formal promises from both partners to a mixed marriage, the equivalent promises would be sufficient for the valid granting of a dispensation. In view of the circumstances, whatever could be obtained from the partners, or even from one of them, to ensure the protection of the faith of the Catholic and the religious upbringing of the children in the Catholic faith was to be considered as equivalent to the usual formal promises. We intend here to analyze, at some length, the documents containing these instructions, placing them in their historical setting and chronological order.

a) S. C. Holy Office - Indult - April 5, 1918

On April 5, 1918, the Holy Office granted an indult to the Vicars Apostolic to China. The introductory part of the document provides us with the information surrounding the indult and also the motives prompting the Sacred

Congregation to grant it. Subsequent to the decree of the Holy Office, of June 12, 1912, declaring nullity of dispensations from the impediment of disparity of worship due to the lack of the usual promises,¹² certain Vicars Apostolic to China brought to the attention of the Sacred Congregation the difficulties they encountered in obtaining the usual promises.

Upon inquiry among all the Vicars Apostolic, the Holy Office realized that the difficulties referred to were not peculiar to any particular region but common to the country at large. The circumstances in China at that time were these: (1) on account of the particular situation, especially of women, in that country, marriages between Catholics and the unbaptized, especially between Catholic men and unbaptized women, were mostly unavoidable; (2) it was often impossible and most difficult to obtain the promises from an unbaptized woman; frequently it was even harmful; (3) by reason of custom in that country, only the promises made by men were so binding that their eventual fulfilment was morally certain.

In view of these considerations, the Holy Office felt that a certain relaxation of its decree of June 12, 1912 was necessary. In arriving at this decision, the Sacred Congregation was eager to point out that, although the

¹² See Gasparri, Fontes, IV, 1293, p. 558.

promises were demanded by divine and natural laws, the manner of exacting them was to be determined by the Church according to various circumstances. In the legislative part of the indult, the Sacred Congregation determines precisely the manner of exacting the promises in these particular circumstances. It ruled that: (1) as far as possible, the decree of June 12, 1912 should be faithfully observed; if the promises from an unbaptized woman could not be had in writing, they could be obtained even orally; (2) if even the oral promises could not be had, then it was left to the prudence and conscience of the Vicars Apostolic to determine, in individual cases, whether or not the promises were contained equivalently in the serious promise of the woman to embrace the Catholic faith or in her enrolment among the catechumens, or finally in the laws and customs of the people, according to which the woman had no power over the religious upbringing of the children, which depended solely on the will of the father; (3) in all these cases, however, the obligation of the Catholic to make the usual promises remained unaltered; and (4) no dispensation was to be granted unless there was moral certainty regarding the

fulfilment of his promises.¹³

The provisions of the indult reflect the pastoral concern of the Church and its attempt to accommodate the legislation to particular needs. Because of the impossibility, or at least extreme difficulty, of obtaining the usual promises, even orally, from an unbaptized woman, the demand of the promises from both partners for the validity of the dispensation was mitigated. However, it makes adequate provisions to safeguard the faith of the Catholic and to ensure the baptism and upbringing of the children in the Catholic faith. The substance and intent of the legislation do not seem to have been changed, but its formulation and application have been adapted to meet the needs of a particular area.

b) S. C. Holy Office - Reply - February 19, 1938

Certain customs of the Minor Sunda Islands prevented, in effect, the Catholic upbringing of the children. Catholic

13 "[...] Quapropter inspectis peculiaribus istius regionis circumstantiis, eadem Sacra Congregatio praescribit quae sequuntur: [...] Siquidem vero neque hoc obtineri queat, remittitur prudentiae et conscientiae uniuscuiusque Vestrum, indicare, in singulis casibus, an cautiones ipsae aequipollenter contineantur sive in seria mulieris promissione amplectendi Catholicam Fidem, [...]: firma tamen, omnibus hisce casibus, obligatione exigendi cautiones a parte catholica, et non concedendi dispensationem nisi moralis habeatur certitudo de ipsarum implemento", in CPR, 19(1938), pp. 103-104. For a brief commentary on this indult, see G. Vromant, De Matrimonio, pp. 136-137.

parents lost all right over their children regarding their religious upbringing when they became of age, and they were even obliged to hand some of their younger children to unbaptized parents or tutors or even Mohammedans who would, foreseeably, prevent their Catholic upbringing. The Vicar Apostolic of the said Islands asked the Holy Office whether, in view of these customs, missionaries may join Catholics in marriage, when the religious upbringing of all children in the Catholic faith could not be guaranteed, and also whether dispensations from the impediment of disparity of worship may be granted validly, when the couple could not promise that all their children would be brought up in the Catholic faith. On February 19, 1938, the Holy Office replied to the Vicar Apostolic affirmatively on both questions, on condition that the couple were prepared to do all in their power to procure the baptism and upbringing of all their children in the Catholic faith.

An explanatory note, setting forth the motives prompting the decision and explaining the conditions for dispensations, was also attached to the reply. It reaffirmed the traditional teaching on the promises and, at the same time, took into account the particular situation in the said regions. After providing the missionaries with some practical guidance and directives, the explanatory note lays down the

principles involved in the decision of the Holy Office.¹⁴

The obligation of the parents to procure the baptism and upbringing of all their children in the Catholic faith is one imposed on them by divine and natural laws. Therefore, they should be prepared to do everything in their power to achieve this end. Once they have sincerely done everything they could toward this end, they can rest assured that they have fulfilled their obligation, even if their sincere good will and earnest efforts did not produce the intended result, on account of factors beyond their control. Although their obligation is imposed by divine and natural laws, these laws do not hold them responsible to do the

14 " [...] quoad secundam partem (seu in aliis casibus) AFFIRMATIVE dummodo partes paratae sint facere quod in se est ad obtinendam catholicam educationem universae proles. NOTAE EXPLICATIVAE Huius S. Congregationis in datis ad proposita Dubia Responsis mens ea est, ut ex una parte gravis parentum obligatio catholice baptizandi et educandi prolem firma omnino et integra maneat, ex altera autem parte fidelibus et catechumenis ne gravius onus imponatur, quam quod Dei et naturae lege ipsis impositum est. [...] Dei enim lex, qua parentes ad catholicam omnis proles educationem obligantur, non ad impossibilia illos ligare intendit. Neque, si faciunt sincere quod possunt facere, ipsi non sunt causa, cur proles catholice baptismate et catholica educatione privetur. [...] Quapropter quantumvis ex una parte fidelibus ac catechumenis gravissima parentum obligatio prolem catholicam educandi inculcari debeat, ex altera parte eis non gravius onus imponendum est, quam auctor naturae et gratiae, Deus Ipse, imposuit; neque ab eis exigendum est, ut si, postquam quae facere potuerunt fecerunt, ad catholicam educationem in tuto collocandam, eam obtinere non potuerunt, aut innupti maneant aut existent sacramentis et gratiis Ecclesiae privati", in Sylloge, 206 bis, pp. 562-566.

impossible.. If possible, Catholics should contract marriages with persons who would not constitute a proximate obstacle to the Catholic upbringing of the children. However, the divine and natural laws obliging them to the Catholic upbringing of all their children do not prevent them from exercising their God-given natural right to marry and have children, even if it is foreseen that they would not be brought up in the Catholic faith. The moral principle of double effect is applicable to this situation. According to the understanding of the Holy Office, this God-given natural right of every man and woman to marry and have children seems to take precedence over the obligation imposed by the same laws regarding the Catholic upbringing of all the children.

In view of these fundamental principles interpreted and enunciated by the Church, it could not lay any heavier burden on the parents or on the partners to a mixed marriage than the superior laws themselves would warrant. Hence, it felt that marriages could be permitted, and dispensations from the impediment of disparity of worship could be granted validly, even if it is foreseen that all the children would not be brought up in the Catholic faith. In view of the particular circumstances, as mentioned above, the Church seems to have concluded that the requirements of divine and natural laws regarding the religious upbringing of the

children were met adequately by the readiness and willingness of the couple to do everything in their power to achieve that end.

c) S. C. Holy Office - Reply - April 21, 1938

In the Plenary Meeting of the Ordinaries of Japan, held in the spring of 1937, a draft letter to be sent to the Holy See was approved.¹⁵ The letter had as its set purpose to inform the Holy See of the status and conditions of the Church in Japan, of the difficulties, even adverse effects, faced there in implementing the legislation in the CIC regarding mixed marriages in general and the requirement of the formal written promises in particular. The Ordinaries felt that in most cases it was impossible, or at least not expedient, to obtain or insist on the formal promises from both partners. Hence, they sought extensive Faculties to deal with the situations, and more specifically they requested from the Holy See permission to allow mixed marriages by observing only what was strictly required by the divine law.

The Ordinaries based their request on a number of theological presuppositions and juridical principles. They argued that the formal promises are not of divine, but only

¹⁵ For the draft of the letter, its history and circumstances, see J.P. Labelle, "Les cautions équipollentes concédées au Japon", in RDC, 16(1966), pp. 160-180.

of ecclesiastical law. As such, in the past they were not always required, and they can also be modified by the legislator. The end of the promises can be attained also by equivalent promises. Therefore, in certain cases, it is possible to be satisfied with equivalent promises rather than insisting on the formal ones. As the Ordinaries stated that the promises were only of ecclesiastical law, they were anxious to point out what they considered to be of divine law in the mixed-marriage promises. According to them,

What is of divine law is only the obligation of the Catholic partner to do what in him lies to transmit to his children, together with natural life, also supernatural life through baptism and upbringing in the Catholic faith.¹⁶

16 "Il se pose donc la question: Ne serait-il pas possible - sans faire le moindre tort à celles des exigences du Code fondées sur le Droit divin - au lieu d'insister sur les cautiones formales (regulariter in scriptis) de se contenter de cautiones aequipollentes? En d'autres termes: Ne suffirait-il pas dans les cas nombreux où les circonstances laissent prévoir que la partie catholique - pourvu qu'elle agisse prudemment - ait toute liberté d'exercer sa religion librement et d'élever ses enfants dans la Foi, ne suffirait-il donc pas dans ces cas que la dispense soit donnée sans cautiones formales, ces circonstances en elles-mêmes étant considérées être une garantie suffisante? En posant cette question, nous supposons que les cautiones formales constituent une matière juris ecclesiastici, et que, par conséquent, comme elles n'ont pas été exigées toujours, elles peuvent être modifiées par le législateur; bref: qu'elles ne sont pas juris divini. Juris divini est uniquement le devoir de la partie catholique de faire son possible pour propager avec la vie naturelle aussi la vie surnaturelle à ses propres enfants par le baptême et l'éducation catholique", in J.P. Labelle, "Les cautions équipollentes", p. 165.

In other words, in the view of these Ordinaries, the divine law requirement in a mixed marriage consists solely in the obligation of the Catholic partner to do his best to procure the baptism and upbringing of his children in the Catholic faith.

The letter was sent to the Cardinal Prefect of the S. C. for the Propagation of the Faith who, in turn, forwarded it to the Holy Office. In its reply of April 21, 1938, the Sacred Congregation stated that, in view of the extraordinary conditions prevailing in Japan, the Ordinaries there may grant dispensations from the impediment of mixed religion and disparity of worship with equivalent promises, when the formal promises could not be had, or when it was inexpedient to insist on them. It also reminded the Ordinaries of their grave obligation in conscience in dealing with such matters, and also in requiring that the Catholic partner be sincerely prepared to do everything in his power to procure the baptism and upbringing of all the children in the Catholic faith.¹⁷ In order to assist the Ordinaries further in this matter, and also to aid them in dealing with possible situations where the baptism and the Catholic upbringing of the children may

¹⁷ "[...] affirmative, graviter onerata conscientia Ordinariorum localium, et dummodo pars catholica sincere parata sit praestare quod potest ut proles catholice baptizetur et educetur. [...]" in Sylloge, 206 bis, pp. 561-562.

be impeded, independently of the good will and earnest efforts of the couple, the Holy Office attached to this reply a copy of its reply and explanatory note, sent a little earlier to the Vicar Apostolic of the Minor Sunda Islands where analogous situations existed. ..

This reply of the Holy Office to the Ordinaries of Japan appears to be a turning point in the understanding and interpretation of the divine law obligation in mixed marriages, the content of the promises, and also of their sincerity. What the Ordinaries requested of the Holy See was to allow them to permit mixed marriages by observing only the divine law mandate. This mandate, according to them, consists solely in the obligation of the Catholic partner to do his best to procure the baptism and upbringing of the children in the Catholic faith. And this mandate is fulfilled when the Catholic partner acknowledges and accepts this obligation. The equivalent promise is had when such acknowledgement and acceptance are really present. In its reply, the Holy Office seems to confirm the description of the divine law mandate as provided by the Ordinaries, and also the substance of the equivalent promise as explained by

them.¹⁸ For it allows them to grant dispensations from the impediments of mixed religion and disparity of worship, provided the Catholic partner is sincerely prepared to do his best to provide for the baptism and upbringing of all the children in the Catholic faith.

Although a copy of the reply and explanatory note to the Vicar Apostolic of the Minor Sunda Islands was attached to this reply, the reply itself makes no mention of any promise, in whatever form, by the non-Catholic partner. No mention is made of any formal promise by the Catholic. Nor is there any mention regarding moral certainty on the part of the dispensing superior concerning the fulfilment of the obligation by the Catholic partner. Likewise, there is no recommendation that the Catholic choose a marriage which would better ensure the religious upbringing of the children. The prescriptions of Canon 1061 regarding the promises seem

18 J. Tomko offers the following comments on this matter: "Tale concetto del diritto divino ha trovato piena conferma nella risposta del Sant'Uffizio, in data 30 marzo³ 1938, rimasta famosa nella storia della giurisprudenza canonica in questa materia. [...] Le cauzioni equipollenti di cui si fa menzione nel rescritto, consistono nelle circostanze dalle quali il dispensante raccoglie, anche senza promesse o dichiarazioni del nubente, la certezza morale che sarà adempiuto ciò che la legge divina richiede. Viene quindi confermato che la legge divina, secondo la risposta, esige la disposizione sincera, nella sola parte cattolica, di fare il possibile per assicurare ai figli il battesimo e l'educazione cattolica", in Matrimoni Misti (1971), pp. 54-55.

to be reduced to one single demand: the sincere determination of the Catholic partner to do what in him lies toward the Catholic upbringing of his children. This would further imply that the divine law mandate, under the circumstances, is considered to be fulfilled adequately through the sincere determination and readiness of the Catholic partner to do his best to procure the upbringing of the children in the Catholic faith.

d) S. C. Holy Office - Reply - January 27, 1949

In July 1948, the Bishop of Kingsien, China, brought to the attention of the Holy Office that, in certain parts of China under Communist occupation, it was impossible, or at least very difficult, for Catholics to comply with the legislation regarding dispensations from the matrimonial impediments, particularly of age and disparity of worship. Regarding the latter, the bishop asked the Sacred Congregation whether, under the circumstances, Catholics were still bound by the impediment of disparity of worship if, through forgetfulness, ignorance, or some other inculcable cause, the usual promises were not given, or they were even refused by the non-Catholic partner. The reply of the Holy Office, dated January 27, 1949, referred the bishop to its reply of April 21, 1938 to the Ordinaries of Japan, instructing him to make use of the provisions of the equivalent promises

contained therein.¹⁹

By order of the Cardinal Secretary and the Assessor of the Sacred Congregation, portions of the reply were explained by Father Francis Hürth, Consultor of the Holy Office, and made part of the document. Father Hürth thus described the equivalent promises referred to in the reply to the Ordinaries of Japan:

Equivalent promises, according to a certain reply of the Holy Office given to Japan, are had, when the Catholic partner manifests sincerely a firm resolve to do everything in his power to procure the baptism and upbringing of all the children in the Catholic faith. If the non-Catholic partner refuses to have and manifest the same resolve, the equivalent promises, according to the reply cited, are not thereby destroyed.²⁰

Here we have the first authoritative declaration of the equivalent promise as contained in the reply to the Ordinaries of Japan. That reply spoke of the sincere readiness or determination ("sincere parata sit") of the Catholic partner to do everything in his power toward the Catholic upbringing

19 See Periodica, 38(1949), pp. 187-188.

20. "'Cautiones aequipollentes' secundum aliquod S. Officii Responsum, datum pro Iaponia, habentur, quando pars catholica sincere manifestat firmum propositum faciendi, ex sua parte quod facere potest, ut universa proles in fide catholica baptizetur et educetur. Quodsi pars acatholica recusat, idem propositum concipere et manifestare, 'cautiones aequipollentes' secundum allegatum Responsum eo non destruntur", in Periodica, 38(1949), p. 189.

of the children. That reply made no mention of the role, if any, the non-Catholic had to play in regard to the equivalent promises. This authoritative declaration, furthermore, seems to make it abundantly clear that the sincerely manifested, firm resolve of the Catholic partner to do his best to provide for the Catholic upbringing of the children would alone constitute the equivalent promises. Any cooperation of the non-Catholic in this matter seems to be irrelevant; even his refusal to have such a resolve or to manifest it does not seem to threaten the presence of the equivalent promises.

This declaration, again, seems to be very much in line with the perception, by the Ordinaries of Japan, of the divine law obligation. Thus, from the declaration of the Holy Office regarding the equivalent promises, it could be argued that the divine law requirement in a mixed marriage would be fulfilled solely by the sincere good disposition of the Catholic partner, by the sincere manifestation of his firm resolve to do what in him lies toward raising the children in the Catholic faith. However, another statement of the Holy Office seems to question such an inference.

By order of the Assessor of the Sacred Congregation, Father Hürth added a further declaration concerning the equivalent promises. This declaration, bearing the date of

February 21, 1949, was sent to the Bishop of Kingsien, as a supplement to the reply of January 27, 1949. It stated:

Equivalent promises are to be considered sufficient for contracting mixed marriages, only if, considering individual cases, it is morally certain that the sincere, manifested will of the Catholic partner to baptize and bring up all the children in the Catholic faith would also be accomplished (etiam effectum habituram esse).²¹

This additional declaration seems to introduce a new element into the meaning of the equivalent promises. In addition to the sincere, manifested will of the Catholic, there must also be moral certainty regarding the end result, the effective accomplishment of this sincere will, the fulfilment of the equivalent promises. Logically, then, according to this new provision, wherever such moral certainty would be lacking, the equivalent promises could not be considered sufficient to permit a mixed marriage.

Why this new declaration? What does it really add to the previous one? Apparently there were some who argued

²¹ "Nam die 21 Febr. 1949 de mandato Exc. mi Assessoris S. Officii transmissum fuit sequens de cautionibus SUPPLEMENTUM: 'Cautiones aequipollentes' tunc tantum sufficientes habendae sunt ad matrimonium cum parte pagana aut parte baptizata acatholica ineundum, si, considerati[s] singulorum casuum condicionibus, moraliter certo constet: manifestam sinceram partis catholicae voluntatem de universa prole catholice baptizanda et educanda, etiam effectum habituram esse", in F. Hürth, "Adnotationes", in Periodica, 38(1949), p. 193. See also A. Wang, De Dispensatione super Impedimento Disparitatis Cultus maxime in Sinis, p. 30.

that the reply of January 27, 1949, because it referred specifically to that of April 21, 1938, provided not only for situations in which no formal promises were given by the non-Catholic partner, but also for those in which there was no moral certainty that the equivalent promises would have their intended result; it even provided, they said, for situations where it was morally certain that the end result would be quite contrary to what was promised. Some argued that, according to the declaration concerning the equivalent promises, moral certainty of the actual, sincere determination of the Catholic to do his best was alone sufficient, and moral certainty of the successful execution of that determination was not necessary.²² Father Hürth refers to this dispute and invokes the second declaration to point out that,

22 For the different aspects of this dispute, see, for example, J. Dubany, "Una Respuesta del Santo Oficio sobre los Impedimentos Matrimoniales", in Revista de Derecho Canonico, 5(1950), pp. 643-666; G. Raamsdonk, De Cessatione Impedimenti Disparitatis Cultus in Extraordinariis Territoriis Circumstantiis (1955), pp. 82-97; P. Ma Hsiao-Hsien, De Matrimoniis a Fidelibus sive inter se, sive cum A Catholicis Tempore Occupationis Communistarum Praesertim in Sinis, Contractis (1958), pp. 49-73; I. Ting Pong Lee, Facultates Apostolicae (1962), pp. 258-259; J. Defourny, "De Necessitate Certitudinis Moralis in Cautionibus Aequipollentibus", in The Japan Missionary Bulletin, 19(1965), pp. 496-504, 577-583, 604, 644-727; J.P. Labelle, "De Cautionibus Aequipollentibus", in The Japan Missionary Bulletin, 19(1965), pp. 255-258; "Les cautions équipollentes concédées au Japon", pp. 196-198; J.G. Gerhartz, "Die Katholische Kindererziehung in der Mischehe und das göttliche Recht", in Theologie und Philosophie, 42(1967), pp. 563-565.

in the mind of the Sacred Congregation, moral certainty regarding the fulfilment of the promises is also required. However, he concludes his own comments on this declaration by stating that the entire legislation regarding the promises, beyond the natural obligation of the parents to raise their children in the true religion, is of ecclesiastical law.²³

In spite of the apparent reasons prompting this second declaration and its relative merits, it seems to have ignored the extraordinary conditions in view of which the provisions of the equivalent promises were introduced. Cross references to the replies to the Minor Sunda Islands and Japan would imply that the Sacred Congregation viewed the extraordinary conditions in China as quite analogous, if not similar, to the conditions in the other two places. In all three cases, in general, usual formal promises could not be had from one or both of the partners, and there was the danger, due to the particular customs of the people, law of the land, or political situations, that all the children would not be raised in the Catholic faith, regardless of the sincere good will and earnest efforts of the couple. In view of these considerations, the declaration of the Holy Office that the equivalent promises, in order to be considered

²³ See F. Hürth, "Adnotationes", pp. 193-194; see also J. Tomko, Matrimoni Misti, p. 55.

sufficient for a mixed marriage, should be coupled also with moral certitude concerning their effective accomplishment seems to have confused the situation. This is evident from the fact that the Sacred Congregation felt compelled to give further clarification on the matter.

e) S. C. Holy Office - Decree - December 22, 1949

The provisions of the equivalent promises and the authoritative declarations regarding their use were interpreted differently, even misleadingly, in many parts of China. In order to remedy this situation, and also to provide an authoritative declaration on the whole question of the promises and their application in China, under the circumstances, the Holy Office issued a decree on December 22, 1949. It ruled that, in spite of the reply of January 27, 1949, and the supplement of February 21, 1949, as long as the said conditions continue to last in China, the legislation on the promises was only for liceity and not for validity of a marriage with a non-Catholic. The decree, however, emphasized that the grave obligations of the faithful, imposed by natural and positive laws, to procure the baptism and upbringing of all their children in the Catholic faith remained firm and

unimpaired.²⁴

This decree seems to state that all provisions of ecclesiastical law regarding the promises in whatever form, and the moral certitude of their eventual fulfilment can be dispensed with under certain conditions. What cannot be dispensed with, what must remain unmitigated, unaltered, and unimpaired is the grave obligation of the faithful to do their best to procure the Catholic upbringing of all their children.

f) S. C. Holy Office - Reply - April 27, 1961

Through his letter of December 15, 1959 to the Cardinal Prefect of the S. C. for the Propagation of Faith, the Bishop of Fukuoka, Japan, asked for some clarifications on the manner of dispensing from the matrimonial impediments of mixed religion and disparity of worship, and also on the equivalent promises. He stated that he was prompted to seek these clarifications because of the particular circumstances affecting mixed marriages in his diocese and because of the

²⁴ "[...] Quod attinet ad praestandas cautiones, de quibus tum in Decreto tum in Supplemento, eas abhinc, durantibus iisdem condicionibus, requiri ad solam liceitatem, non ad validitatem matrimonii cum parte acatholica contrahendi, firma semper et integra manente gravi legis naturalis et positivae obligatione catholice baptizandi et educandi universam utriusque sexus prolem", in X. Ochoa, Leges Ecclesiae (1969), Vol. II, n. 2093.

various interpretations among the authors regarding the use of the equivalent promises. The bishop asked specifically whether, in order to apply validly the equivalent promises, moral certainty was required that the sincere, manifested will of the Catholic partner to baptize and bring up all the children in the Catholic faith would also be accomplished. The Holy Office, on April 27, 1961, replied to the bishop that, since it was a disputed matter among authors, he could, in conscience, choose one or another of the reputed authors.²⁵

g) S. C. Holy Office - Reply - January 7, 1965

On April 18, 1964, the same bishop presented a case to the Holy Office, involving an arranged marriage between a newly converted girl and an unbaptized man. The specific issues involved were these: (1) the Catholic partner promised to do her best toward the Catholic upbringing of the children; (2) the non-Catholic refused to make formal promises, but was willing to allow the children to be raised in the Catholic faith; but (3) it was foreseeable that the children would not actually be raised as Catholics, independent of the good will and efforts of the couple.

²⁵ See J.P. Labelle, "De Cautionibus Aequipollentibus", pp. 255-258; "Les cautions équipollentes concédées au Japon", pp. 192-199.

In view of these considerations, the bishop asked whether the marriage could be permitted applying the equivalent promises. He explained, at some length, the reasons for his doubt, and, in doing so, he reviewed the interpretations of various authors and responses of the Holy Office particularly regarding moral certitude of the eventual fulfilment of the equivalent promises. The bishop concluded that, in his view, the marriage could be permitted. He also pointed out that his view found confirmation in the text of the Conciliar Schema on Marriage (1964). The Holy Office, on January 7, 1965, replied to the bishop that dispensation from the impediment of disparity of worship could be granted in view of the equivalent promises already made, and after reminding the petitioner of her religious obligations toward ~~herself and to~~ the children.²⁶

* * * * *

Our review of the history and content of the equivalent promises enables us to draw some important conclusions. Although the equivalent promises were provisions made to meet specific needs of particular territories, some

²⁶ See J.P. Labelle, "De Cautionibus Aequipollentibus", pp. 255-258; "Les cautions équipollentes concédées au Japon", pp. 200-206.

general principles seem to emerge from them. In its attempt to deal adequately with the situations in these territories, the Church felt compelled to examine more thoroughly its own legislation regarding the promises. Its understanding and interpretation of the divine and natural law obligation of the parents to raise all their children in the Catholic faith seemed to be in conflict with the natural right of every person to marry and have children. But the Church's gradual, deeper understanding of the nature and extent of the divine and natural law obligation of the parents regarding the religious upbringing of their children enabled it to clarify further what was of divine law and what was of ecclesiastical law. Such a clarification helped it to establish what was essential regarding the promises and what was subject to dispensation. The whole legislation regarding the promises can be dispensed. That from which one cannot be dispensed is the divine law obligation. In trying to deal with the above situations, the Church seems to have arrived at a more precise and specific notion of the divine law obligation in mixed marriages. This requirement, ultimately, seemed to consist in the obligation of the Catholic partner to do his best to procure the baptism and upbringing of all the children in the Catholic faith. Finally, the Church seems to have concluded that this divine law obligation is fulfilled by the sincere

manifestation of the Catholic's firm resolve to do everything that in him lies to see to the Catholic upbringing of the children. The Church's insistence that the Catholic partner be sincerely prepared to do his best, or that he manifest sincerely his firm resolve, or that there be a sincere, manifested will to achieve this end, seems to indicate the importance it placed on sincerity in relation to the fulfillment of the divine law obligation.

These conclusions point already to the thinking behind the Conciliar and post-Conciliar developments on the sincerity of the mixed-marriage promises. However, before studying these developments, we shall examine briefly how sincerity in the promises was interpreted in the jurisprudence of the S. R. Rota.

CHAPTER IV

JURISPRUDENCE OF THE S. R. ROTA

Since the S. C. of the Holy Office has had exclusive competence to deal with all matters pertaining to the impediments of mixed religion and disparity of worship,¹ we cannot expect to find an established Rotal jurisprudence regarding the mixed-marriage promises or their sincerity. The Rota could try the cases involving these impediments only when so commissioned by the Holy Office. To date there are three known cases on which the Rota has pronounced sentences on the ground of invalid dispensations on account of insincere promises. However, in a number of other cases tried on other grounds,² it has made some comments on our subject. We do not intend to give here all the particulars of each case; rather, we intend to examine how the judges, in each case, have interpreted the relevance of sincerity.

(1) The Decision of August 11, 1921 (Paris case):
because Roger had fallen away from the Catholic faith and

¹ See Canon 247, § 3; Reply of the Holy Office, January 27, 1928, in AAS, 20(1928), p. 75; G. Arendt, "De Exclusiva S. Officii Competentia circa Matrimonium Mixtum (Can. 247): Historica Juris Adumbratio", in JP, 8(1927), pp. 120-137.

² For a list of decisions on cases in which the mixed-marriage promises were placed as conditions, see W.J. Doheny, Canonical Procedure in Matrimonial Cases (1948), Vol. I, p. 654, footnote 43; p. 1009, No. 7.

had become even hostile to it, Viola placed the condition that she would marry him only if he promised her full religious freedom and the Catholic upbringing of the children. Roger accepted these conditions, but failed to honour them. Nine years after the marriage, Viola obtained a declaration of nullity from the local tribunal on the ground of a non-verified condition. On appeal, the Rota confirmed the sentence.

In order to establish that the promises exacted by Viola affected the consent, the judges drew a parallel between the mixed-marriage promises and other promises exacted by one of the partners as a conditio sine qua non. The non-fulfilment of the former would not affect the validity of a marriage, but that of the latter would, because they are attached to the consent itself. It is in this connection that the judges stated that even if the non-Catholic partner made the mixed-marriage promises insincerely, it would not affect the validity of the marriage, because the consent of the Catholic is not attached to these promises. The situation, however, would differ, if it could be established that the Catholic partner exacted these promises as a conditio sine qua non and

that the non-Catholic made them insincerely.³

(2) The Decision of March 3, 1942 (Bordeaux case): upon obtaining a dispensation from the impediment of disparity of worship, Gaston, a soldier, agreed to marry Georgia, a Jewess, on condition that he would not have to leave the army. After sixteen years of marriage, Gaston petitioned the local tribunal for a declaration of nullity on the ground of a non-verified condition. Upon receiving a negative sentence, he appealed to the Holy Office, which remanded the case to the Rota. Meanwhile Gaston petitioned that the Rota adjudicate the case also on the ground of invalid dispensation on account of the lack of canonical causes. On this ground the Rota gave an affirmative sentence.

Speaking in general on the promises to be given in mixed marriages, their necessity for the dispensation, and moral certitude regarding their fulfilment, the judges stated that for the validity of a dispensation it is sufficient that

3 " [...] cum hae promissiones ab Ecclesia imponantur, pars catholica his promissionibus consensum matrimonialem non alligat, neque in essentialia contractus matrimonialis ingrediuntur. Quare, etiamsi pars acatholica ficte promittat, peccat utique, sed quia consensus alterius partis his promissionibus non subiicitur tamquam conditioni sine qua non, matrimonium validum nihilominus censendum erit. Secus vero dicendum quoties constet partem catholicam has promissiones petiisse tamquam conditionem sine qua matrimonium non contraheret, et simul constet partem acatholicam ficte promissione ficteque promissiones iuramento confirmasse", S. R. R. Decisiones, 13(1929), c. Solieri, p. 214, No. 23.

the promises be given by both partners and that there be moral certitude concerning their fulfilment, even if later on it became apparent that one or both of the partners had actually given insincere promises. In support of their view, the judges cited the decision of August 11, 1921. They also pointed out that nowhere is it stated that the validity of the dispensation depended on the objective sincerity of those making the promises or on the objective truth of moral certitude of the dispensing superior.⁴ This case will be studied again by the Rota (see below No. 7).

Like the previous decision, this too only indirectly touches upon the question of sincerity. Nevertheless, proponents of the view that insincere promises did not invalidate a dispensation and even the marriage itself pointed to these decisions in support of their contention.⁵

⁴ "Sufficit autem ut hae cautiones ex parte coniugum reapse praestentur et ut 'moralis habeatur certitudo de cautionum implemento' [...], quibus conditionibus impletis ipsa dispensatio valet, etsi postea detegatur alterutrum vel utrumque coniugem fide illas promissiones dedisse [...]. Sane, Ecclesia non dispensat nisi antea nupturientes praestent duplicem illam cautionem circa duas cautelas iniungendas et nisi dispensans morali cum certitudine censeat nupturientes adimpleturos esse id quod promiserint; sed nullibi statuit valorem dispensationis dependere ab obiectiva sinceritate nupturientium et ab obiectiva rei veritate moralis certitudinis quam dispensans habere debet", S.R.R. Decisiones, 34(1951), c. Wynen, p. 135, No. 13.

⁵ See J. Hagan, Sincerity and the Pre-Nuptial Guarantees, pp. 95-99; B. Beck, De Cautionibus sincere Praestandis, pp. 20, 82-83; S.D. Lourdusamy, Pre-Nuptial Guarantees, pp. 147-150.

(3) The Decision of January 26, 1948 (Albany case): this is the first known decision declaring nullity of a marriage on the ground of an invalid dispensation on account of insincere promises. It involved a marriage between Joseph, a Catholic, and Maria, a member of the Dutch Reformed Church.⁶ Though reluctantly, Maria made the usual promises; and a dispensation from the impediment of mixed religion and, ad cautelam, disparity of worship, was granted. However, prior to the wedding, Maria insisted that Joseph agree, in the presence of a public notary, that all the children would be raised as Protestants. Also upon her insistence, a Protestant ceremony took place immediately after the wedding. When a child was born, it was first baptized in a Catholic church, against the wishes of the mother, and then in a Protestant church, without the knowledge of the father. Five years after the marriage, Joseph obtained a divorce on the ground of adultery on the part of Maria. And seven years later, he sought the assistance of the local Ordinary to correct the situation, so that he could marry the woman, a Catholic, with whom he was cohabiting.

⁶ Details of this case, not contained in the Rotal sentence, are based on: [Anonymous], "The Invalidity of a Dispensation because of Insincere Promises", in The Jurist, 9(1949), pp. 50-51; N.J. Kelly, "Insincere 'Cautiones'", pp. 33-56.

The Ordinary entrusted the case with the Promoter of Justice, who petitioned the local tribunal for a declaration of nullity on two grounds: a condition against the spiritual welfare of the offspring, and the existence of the impediment of disparity of worship due to the absence of baptism in Maria. In the course of the trial, the local tribunal became doubtful as to whether there existed a dubium iuris regarding the invalidating effect of insincere promises. The local Ordinary, therefore, submitted the entire matter to the Holy Office, which, in turn, instructed the local tribunal to proceed with the trial and pronounce sentence in the first instance and then appeal it.⁷ The local tribunal acted accordingly and handed down an affirmative sentence on both grounds on which the marriage was attacked. On appeal, the Holy Office remanded the case to the Rota. Rejecting both grounds on which the marriage was first attacked, the Rota confirmed the sentence on the ground of an invalid dispensation from the impediment of disparity of worship on account of insincere promises.

After reviewing briefly the legislation regarding the mixed-marriage promises in general, their necessity, moral certitude of their fulfilment, and the divine law requirement to be satisfied through them, the judges took

7. See N.J. Kelly, "Insincere 'Cautiones'", p. 39.

up the question of sincerity. They referred to the reply of the S. C. for the Propagation of the Faith to the Bishop of Ottawa, dated April 17, 1879, which instructed him not to grant dispensations unless the promises were given sincerely; they also took note of the controversy regarding the invalidating effect of insincere promises; and they referred to the two Rotal decisions, those of August 11, 1921 and March 3, 1942, which remarked that insincere promises would not invalidate a dispensation and marriage.

The judges, then, affirmed that, in their view, insincere promises invalidated a dispensation, because through such promises the conditions of the divine law could not be fulfilled; through such promises the danger to the faith of the Catholic partner is not eliminated, nor the baptism and upbringing of the children in the Catholic faith guaranteed. They also refuted the argument that nowhere is it stated that sincerity is required for the validity of the dispensation. They argued that this requirement is contained in the very nature of the promise itself. A promise, by definition, is the external manifestation of an actual will to do something in the future. Hence, insincere promises are no promises at all, because they do not contain the actual will or intention to carry out what is externally expressed. Briefly, when a promise is required, it is understood that it be a real and

sincere one. It is this kind of promise that the Church demands for a valid dispensation. Therefore, if after the promises are given it becomes apparent that one or both of the partners manifested contrary intentions, the promises are thereby destroyed; no dispensation can be granted, because no promises exist; and if a dispensation has been granted, it becomes invalid, because the promises are a condition for its validity.⁸

(4) The Decision of April 4, 1951 (Brooklyn case): this is the second known decision declaring nullity of a marriage on the ground of an invalid dispensation on account of insincere promises. It involved a marriage between Maurice, a Catholic, and Sonya, a Jewess. Maurice persuaded Sonya to sign the usual promises by telling her that they were mere formalities to be complied with. With a dispensation from

⁸ "[...] Tamen certa videtur sententia, quae negat validitatem dispensationis, eo quod per insinceras cautiones apparenter tantum, non realiter, conditiones verificantur; manet enim contumelia Creatoris. Namque si promissiones fiant cum animo eas non implendi, nequit dici de facto remotum periculum perversionis coniugis vel saltem educationis prolis extra catholicam fidem. Nec obiiciatur sinceritatem nullibi exigi expresse ad validitatem concedendae dispensationis. Exigitur enim ex ipsa natura cautionis [...]. Insincera promissio veri nominis promissio non est, cum nullam contineat actualem voluntatem aliquid faciendi. Uno verbo, promissio quando exigitur intelligitur serio praestanda, secus promissio non est, nec tamquam talis considerata quoties fictio exterius verbo aut scripto manifestetur, idque probari possit. [...]", S.R.R. Decisiones, 40(1958), c. Brennan, pp. 40-41, No. 7.

the impediment of disparity of worship, their two-year old civil marriage was convalidated. Seventeen years later, they obtained a divorce. Maurice petitioned the local tribunal for a declaration of nullity on three grounds: exclusion of children on the part of Sonya; invalidity of the dispensation on account of insincere promises; and a non-verified condition he claimed to have placed that Sonya make the promises sincerely. The local tribunal refused to consider the second ground, but tried the case on the other grounds and gave a negative sentence. On appeal, the Holy Office remanded the case to the Rota, instructing it to try it in the second instance on the two grounds accepted by the lower court, and in the first instance on the ground of an invalid dispensation on account of insincere promises.⁹

Against the opinion of many authors and also against the opinion of those who held that there existed a dubium iuris, the judges affirmed that it is certain that sincerity is required for the validity of a dispensation, and that promises made insincerely invalidated a dispensation and marriage. They cited the decision of January 26, 1948, and adduced the arguments contained therein. In addition to these, three new arguments were put forward to support their view.

⁹ See N.J. Kelly, "Insincere 'Cautiones'", p. 48.

From the reply of the Holy Office, May 10, 1941, the judges argued that, for the validity of a dispensation, the legislator attends not only to the external manifestation of those making the promises, but also to their internal will and determination to carry out the resolve. According to the said reply, for the validity of a dispensation, both partners must make the promises at least implicitly. They must place acts from which it could be concluded and established in the external forum that they are aware of their obligation and that they have manifested their firm determination to fulfil it; the external as well as the internal elements are necessary.

The judges drew their next argument from the fact that the legislator requires, for the validity of a dispensation, moral certitude of the fulfilment of the promises. According to them, the very foundation of this moral certitude is the objective veracity of the promises; promises made insincerely destroy this foundation. This argument, derived from the need of moral certitude, gains additional strength from the reply cited above. The judges argued that, in view of this reply, what is to be considered primarily is the end intended by the legislator. What is really important is not the state of mind of the dispensing superior, rather it is the determination and firm resolution of those making

the promises to carry out their obligation. The accumulation of arguments and circumstances simply enable the dispensing superior to conclude that those making the promises are aware of their obligation and that they are firmly resolved to fulfil it.

Finally, the judges drew a corroborative argument from the fact that the Holy Office instructed the Rota to try the case also on the ground of invalid dispensation on account of insincere promises. In this action of the Sacred Congregation, they found a confirmation, at least indirect, of their view that no dubium iuris existed on the invalidating effect of insincere promises; in other words, the action of the Holy Office implied that, in its view, sincerity in the promises is required for the validity of a dispensation.¹⁰

10 " [...] Patribus certum visum est non posse ad valorem dispensationis sustineri cautiones insincere seu fecte praestitas: nempe ut dispensatio et matrimonium valeat cautiones esse sincere praestandas [...]. Legislator ad valorem exigit promissionem, non tantum scriptum aliquod documentum, vel, si documentum exigit, ideo exigit ut certitudinem sibi comparet promissionis. Promissio autem est actus voluntatis, quo quis ad aliquid faciendum omittendumve se obligat. Ubi talis voluntas deficit (et deficit certo in eo qui simulate agit), promissio non habetur, neque propterea obligatio moralis, quae promissionem consequitur: frustratur igitur intentio et scopus legislatoris, promissionem ad valorem exquirentis, ideoque et cessat dispensationis beneficium. [...] ad valorem dispensationis [...] lex exigit moralement certitudinem de cautionum implemento. Iamvero admissa simulatione in praestandis cautionibus, corrumpit profecto fundamentum quo moralis haec innitatur haec certitudo [...]. Citata sententia Albanen., coram Brennan, censet merito per

(5) The Decision of February 19, 1952 (Detroit case): this decision involved a case in which the sincerity of the mixed-marriage promises was placed as a conditio sine qua non. When Henry, an Episcopalian, proposed to Sylvestra, a devout Catholic, she made it clear to him that she would marry only if he agreed to taking ten instructions on the Catholic faith and gave proof that he had a favourable attitude to it, and sincerely made the promises regarding her religious freedom and the Catholic upbringing of the children. Although Henry seemed to agree to these conditions, it was later proved that he was not sincere in his actions and promises and that he had deceived Sylvestra. The marriage ended unhappily within three months. Sylvestra obtained a declaration of nullity from the local tribunal on the ground of a non-verified condition. On appeal, the Rota confirmed the sentence.

The judges made only some passing remarks on the promises and the need of their sincerity. However, they stated that insincere promises invalidated a dispensation from either of the impediments. Their remarks were drawn

10 (cont'd) *insinceras cautiones manere adhuc contumeliam Creatoris, quam contra legislator intendit per exactas cautiones avertere [...]. Ne praetereamus denique (id quod nostram conclusionem oblique sed valide confirmat) frustra quidem dedisse S. Officium facultatem videndi etiam de invalida dispensatione ob insinceras cautiones, si inde ab initio causa, ob obiectum dubium iuris, tali sub aspectu, dimittenda esset"*, S. R. R. Decisiones, 43(1961), c. Felici, pp. 261-262, No. 34.

mainly from the decisions of January 26, 1948 and April 4, 1951. As the marriage between Henry and Sylvestra involved only the impediment of mixed religion, the invalidity of the dispensation did not affect the marriage. The burden of the sentence seems to consist in establishing that a Catholic can exact sincerity in the promises from his non-Catholic partner as a conditio sine qua non.¹¹

(6) The Decision of February 26, 1952 (Brooklyn case): this is the confirmation of the decision of April 4, 1951. The judges began the In iure section by describing the promises. They are a means prescribed by the legislator to meet the conditions imposed by divine law. Consequently, if the promises are made insincerely, the conditions of divine law remain unfulfilled. In spite of the controversy and two decisions touching indirectly upon the matter, the judges held it as certain that insincere promises invalidated a dispensation. Arguments from the two earlier decisions, those of January 26, 1948 and April 4, 1951, were repeated as well as from the reply of the Holy Office, May 10, 1941. In

¹¹ "In mixtis nuptiis inter partem catholicam et partem acatholicam baptizatam lex jubet, ut cautiones a parte acatholica signentur et quidem sincero animo, tamen, diversimode ac in mixtis nuptiis propter cultus disparitatem, [...] si fictae cautiones praestentur, dispensatio super impedimento mixtae religionis est irrita quidem, at nuptiae non irritantur", S. R. R. Decisio, c. Fidecicchi, February 19, 1952, in ME, 77(1952), p. 593.

addition, the judges argued that it is inconceivable that the supreme legislator, while requiring the promises for the validity of the dispensation, would be satisfied with merely apparent and feigned promises. The acceptance of such promises would lead to all kinds of abuses in the ecclesial legislation.

A new argument was drawn from the fact that the Holy Office confirmed a decision of the Tribunal of the Vicariate of Rome, declaring nullity of a marriage on the ground of an invalid dispensation on account of insincere promises, without remanding it to the Rota.¹²

Since this decision of the Vicariate Tribunal, April 9, 1949, touched directly upon the subject matter of our study, we should like to examine it here. A marriage, involving the impediment of disparity of worship, was declared null on the ground of an invalid dispensation on

¹² "Cautio dici potest remedium a legislatore constitutum ut Creatoris contumelia avertatur seu ut amoveatur, ex parte coniugis acatholici, periculum perversionis partis catholicae et proli forte oboriturae consulatur per baptismum et catholicam educationem. Nisi proinde cautiones sincere praestitae sint, manet prohibitio iuris divini, seu non verificantur conditiones ad dispensandum requisitae. [...] Omnibus perpensis, dispensationem invalidam fieri ob fecte praestitas cautiones, certum est. [...] Haec esse S. Officii mentem ulterius confirmatum existit ab eadem Congregatione, ubi ratum habuit sententiam a Tribunali Vicariatus Urbis editam, die 9 aprilis 1949, qua nullum declarabatur matrimonium ob cautiones fecte praestitas. [...]" S. R. R. Decisiones, 44(1962), c. Brennan, pp. 130-132, No. 20.

account of insincere promises. The Defender of the Bond appealed directly to the Holy Office. The Sacred Congregation, however, ratified and confirmed the sentence of the Vicariate Tribunal, without remanding it to the Rota for another trial.

In deciding the case, the judges argued that the Church, while requiring the promises for the validity of the dispensation, attends not only to the external manifestations but also to the internal determination and resolve of those making the promises. The external manifestation is presumed to correspond to the internal determination. Insincere promises imposed no obligation on those making them, and the Church certainly does not intend to dispense under the circumstances. This line of argument found ample support in the reply of the Holy Office, May 10, 1941. The judges drew their final argument from the Rotal decision of January 26, 1948.¹³

¹³ "Patres aestimarunt hanc postremam sententiam tenendam esse, nam haud praesumendum est quod Ecclesia in exigendis cautionibus ad valorem, non attendat ad factum internum, quod quidem praecipuum est in actibus humanis; et si exigit factum externum, hoc non fit nisi ut per ipsum attingat factum internum. Deficiente consensu seu interno actu voluntatis, Ecclesia abs dubio non concederet dispensationem, quapropter concludendum est ipsum factum internum etiam considerare. [...] Insuper, attenta declaratione S. C. S. Officii diei 10 maii 1941, Iudices aestimarunt in casu exclusum esse omne prudens dubium. [...] Jam autem quomodo componi potest firmum propositum sese obligandi cum cautionibus fecte praestitis? [...]" Sententia Tribunalis Vicariatus Romae, c. Gomez, April 9, 1949, in II Diritto Ecclesiastico, 60(1949), pp. 178-179.

As pointed out above, in the action of the Holy Office in dealing with this case, the Rotal judges found a confirmation, however indirect, of their view that, according to the mind of the Sacred Congregation, insincere promises certainly invalidated a dispensation. A similar conclusion has been drawn also by other canonists.¹⁴

(7) The Decision of March 28, 1952 (Bordeaux case): this is the confirmation of an earlier decision, coram Filipiak, January 14, 1950,¹⁵ which reversed the decision of March 3, 1942 examined above. The ground on which the case was adjudicated was the invalidity of the dispensation on account of the lack of canonical causes. What is pertinent in this latest decision, for our purpose, is the fact that the judges took issue with the view expressed in the first instance regarding the invalidating effect of insincere promises. They stated very clearly that, in their view, the promises should be made sincerely, and if they are made insincerely, the dispensation and the marriage would be invalid.¹⁶

¹⁴ See N.J. Kelly, "Insincere 'Cautiones'", p. 46; W. F. Allen, "The Insincerity of the 'Cautiones'", p. 79.

¹⁵ S. R. R. Decisiones, 42(1960), c. Filipiak, pp. 27-32, No. 5.

¹⁶ "[...] Firmiter et Nos tenemus cautiones a iure praescriptas sincere esse praestandas, ita ut, si ficto animo dentur, dispensatio inde concessa et matrimonium irrita sint", S. R. R. Decisiones, 44(1962), c. Staffa, p. 197, No. 30.

(8) The Decision of July 10, 1958 (Roman case): upon obtaining a dispensation from the impediment of disparity of worship, Agnes, a Catholic, married George, a Jew. After some years of unhappy marriage, Agnes petitioned the Tribunal of the Vicariate of Rome for a declaration of nullity on the grounds of exclusion of children and sacrament, due to a pact agreed upon by the couple. The Vicariate Tribunal gave a negative sentence on both grounds. On appeal, the same tribunal tried the case in the second instance and gave an affirmative sentence on both grounds. The Defender of the Bond appealed to the Holy Office, which remanded the case to the Rota. The Sacred Congregation instructed the Rota to try the case in the third instance on the grounds of exclusion of children and sacrament, and in the first instance on the ground of an invalid dispensation from the impediment of disparity of worship. The Rota gave a negative sentence.

While examining the possible ground of invalid dispensation in the case, the judges made some remarks on the need of the sincerity in the promises. They referred to the decisions declaring nullity; they also pointed out that the Defender of the Bond, citing the decisions of August 11, 1921 and March 3, 1942, had argued that the opinion that insincere promises invalidated a dispensation was not certain. The judges, then, followed the same line of argument as in the

three decisions declaring nullity. They argued that he who promises insincerely promises nothing. Such promises, therefore, would not fulfil the conditions of divine law. Furthermore, it is inconceivable that the Church, while requiring the promises for the validity of the dispensation, would be satisfied with mere external formalities without attending to the real, internal disposition of those making the promises. The judges also took into account the fact that some canonists who had previously argued for the validity of a dispensation in spite of insincere promises have, of late, changed their opinion.¹⁷

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The three Rotal decisions declaring nullity of marriages on the ground of invalid dispensation on account of insincere promises caused mixed reaction among canonists. Many saw them as settling the controversy, and hence changed their opinion. The decisions as well as the interventions

¹⁷ "Si autem insincere seu fictae cautiones datae sint invalidam esse dispensationem tenet recentior iurisprudentia Rotalis [...]. Qui enim ficte promittit, nihil revera promittit, ideo nihil cavet circa condiciones iure divino requisitas. Absonum videtur censere Ecclesiam contentam esse verbis mere externe ab insincere promittente prolatis, veluti si sufficeret nuda formalitas exarandi actum solemne cuius praetermissio secum trahit invaliditatem dispensationis. [...]" S. R. R. Decisiones, 50[1968], c. Pinna, p. 448, No. 145.

of the Holy Office in these cases were seen by many as an indirect revelation of the mind of the Sacred Congregation and as an indirect confirmation that a dubium iuris regarding the invalidating effect of insincere promises did not really exist.¹⁸ A small number, however, still held that what had taken place, in view of the Rotal decisions, was a change in jurisprudence and not in legislation, and, consequently, the dubium iuris perdured.¹⁹ One canonist even claimed to have information to the effect that the Rotal judges felt certain about the invalidating effect of insincere promises, notwithstanding the controversy and the dubium iuris, because the Holy Office had privately revealed its mind to one of them.²⁰

For the purpose of our study, we should like to take particular note of the doctrinal basis on which the main argument in these decisions seems to be rooted. What emerges clearly and repeatedly from the arguments is that sincerity is connected intrinsically with the nature of the promises, their scope and purpose, and their relationship to the divine law obligations as means to an end. The promises are the

¹⁸ See N.J. Kelly, "Insincere 'Cautiones'", p. 51; W. F. Allen, "The Insincerity of the 'Cautiones'", p. 80.

¹⁹ See F. Nogues, "Un nouveau cas de nullité matrimoniale?", in RDC, 1(1951), pp. 202-221, 336-354.

²⁰ See L. Bender, "Cautiones Non Sincerae", in ME, 80(1955), pp. 320-323.

means prescribed by the Church to fulfil the conditions imposed by divine law. Only real, sincere promises, external manifestations of actual intent and will to carry out the resolve, can be considered to be sufficient to attain this end.

PART TWO
CONCILIAR AND POST-CONCILIAR DEVELOPMENTS

CHAPTER V

CONCILIAR VOTA, SCHEMATA, DELIBERATIONS AND DECISIONS

On January 25, 1959, Pope John XXIII announced his intention to convoke a Synod for the Diocese of Rome and an Ecumenical Council for the Universal Church. He hoped that these events would help bring about the greatly desired and expected ("auspicato e atteso") "aggiornamento" of the CIC, embodying practical norms for the application of the decisions emerging from them. The Pope also expressed hope that these events would further the desired unity among all Christians.¹

To implement his proposed plan, the Pope instituted, on May 17, 1959, the Ante-Preparatory Commission for the Council, appointing Cardinal D. Tardini as its President. This Commission was entrusted with the task of contacting bishops around the world to solicit their suggestions and proposals, of gathering the observations made by the various Roman Congregations, of formulating, in consultation with the Faculties of Theology and Canon Law of Catholic Universities, the general topics to be presented for discussion in the Council, and of recommending the kinds of

1. See AAS; 51(1959), pp. 68-69.

commissions and committees necessary to carry out the proximate preparation and work of the Council.²

In response to Cardinal D. Tardini's request,³ Bishops, Major Superiors of Religious Orders and Congregations, and Catholic Universities suggested topics to be included in the deliberations of the Council; they also proposed changes to be considered in the revision of the CIC. These suggestions and proposals were grouped according to their provenance and were synthesized and arranged according to the Books of the CIC.⁴ The proposed changes in the mixed-marriage legislation, as contained in these volumes, reflect the particular pastoral problems and situations in various parts of the world.⁵ An analysis of these proposals is well beyond the scope of our study. We intend to examine only those which have some bearing on the question of sincerity in the promises.

² See Acta et Documenta Concilio Oecumenico Vaticano II Apparando, Series I (Antepreparatoria), Vol. I, Acta Summi Pontificis Ioannis XXIII (1960), pp. 22-23.

³ See Acta et Documenta, Series I, Vol. II, Consilia et Vota, Pars I (1960), pp. x-xi.

⁴ See Acta et Documenta, Series I, Vol. II-IV, Consilia et Vota (1960-1961); Appendix Vol. II: Analyticus Conspectus Consiliorum et Votorum (1961).

⁵ See Acta et Documenta, Appendix Vol. II, Pars 2, pp. 146-153.

The Bishops' Conference of Germany suggested that the prescription of Canon 1061, § 1, n. 3, regarding moral certitude be altered to read that there be founded hope ("spes fundata") of the fulfilment of the promises.⁶ This same suggestion was offered also individually by Cardinal J. Frings (Köln),⁷ and Bishops F. Hengsbach (Essen) and J. Angerhausen (Auxiliary, Essen).⁸ As a means of securing a better judgement on the willingness and readiness of the couple to fulfil the promises, Bishop W. Kempf (Limburg, Germany) suggested that dispensations from the impediments of mixed religion and disparity of worship be granted only after the couple have been properly instructed by the pastor on the meaning of Christian marriage.⁹ Somewhat along this line, Bishop F. Charrière (Lausanne - Geneva - Fribourg, Switzerland) pointed to the need of laying stress on moral certitude of the fulfilment of the promises.¹⁰

The situations in Japan and China prompted two bishops from there to view the matter differently. Bishop P. Y.

6. See Acta et Documenta, Series 1, Vol. II, Pars 1, p. 767.

7 Ibidem, p. 613.

8 Ibidem, pp. 600, 720.

9 Ibidem, p. 620.

10 See Acta et Documenta, Series 1, Vol. II, Pars 2, p. 39.

Taguchi (Osaka, Japan) proposed that, in view of the present conditions favouring greater individual freedom, no explicit promises be demanded from the non-Catholic; that marriages may be celebrated simply with moral certainty on the absence of danger to the faith of the Catholic partner and on the willingness of the non-Catholic not to impede the religious freedom of the children; but that the grave obligation of the Catholic to do his best to secure the conversion of his partner and the Catholic upbringing of the children be retained.¹¹ According to Bishop J. Oste (Jehol, China), most often the non-Catholic partner made the promises simply as a formality, having no intention to bind himself for the future. Hence, he suggested that the purpose of the promises would be better ensured, if they were exacted only from the Catholic, and if the non-Catholic simply agreed to give his partner freedom to carry out his religious duties.¹²

A rather stricter view regarding the legislation on mixed marriages was expressed by two bishops from North America. Bishop J.M. O'Neill (Grand Falls, Canada) suggested that the Holy See abolish the practice of dispensing from the impediments of mixed religion and disparity of worship. The

¹¹ See Acta et Documenta, Series 1, Vol. II, Pars 4, p. 81.

¹² Ibidem, p. 508.

reasons for his suggestion were that the legislation in the CIC imposed an unbearable burden on the conscience of the bishop, because, in many cases, it is not possible to obtain moral certainty regarding the fulfilment of the promises; and also that rarely is there any canonical cause for dispensation, the usual reason being the couples' desire to marry.¹³ Bishop L. Pursley (Fort Wayne, U.S.A.) suggested that the impediment of mixed religion be made a diriment impediment. He expressed the view that most often the non-Catholic, especially a woman, made only insincere promises, as she knew that the Catholic would agree to the marriage only if she gave the promises. The Bishop also argued that often the non-Catholic partners have really no intention of carrying out the promises.¹⁴

Although all of these suggestions do not touch directly upon the sincerity of the promises, in some ways they seem to express concern over their veracity and sincerity and their eventual fulfilment. These suggestions indicate that some bishops felt the matter to be important, deserving further consideration. We shall now examine how such concerns and suggestions found expression in the

¹³ See Acta et Documenta, Series 1, Vol. II, Pars 6, p. 31.

¹⁴ Ibidem, p. 325.

documents prepared for deliberations in the Council.

Through his Motu Proprio, Superno Dei Nutu, on June 5, 1960, Pope John constituted the various Preparatory Commissions for drafting the preliminary Schemata; at the same time, the Pope also constituted a Central Commission for coordinating the work of all the Commissions.¹⁵ The Commission for the Eastern Churches drafted the first document related to mixed marriages. The text on the Canonical Form of Mixed Marriages, prepared in 1961, stated:

[In order that the Ordinaries may dispense from the canonical form], the dispensation from the impediment of mixed religion should be obtained first, for which the usual promises must be made at least by the Catholic partner who is sincerely prepared to do what in him lies toward the baptism and upbringing of the children in the Catholic faith.¹⁶

It could be pointed out here that the legislation of Canon 51 of the Motu Proprio, Crebrae Allatae (1949) is identical with that of Canon 1061 of the CIC, with no explicit mention of

¹⁵ See AAS, 52(1960), pp. 433-437.

¹⁶ "Ad praecavenda matrimonia invalida christifidelium rituum orientalium, qui cum acatholicis baptizatis -- rite obtenta dispensatione ab impedimento mixtae religionis cautelis praestitis saltem ex parte catholica sincere parata praestare quod potest ut proles catholice baptizetur et educetur --, matrimonia contrahunt, [...]" Disceptatio de Ecclesiae Sacramentis - Schema Propositum a Commissione de Ecclesiis Orientalibus, IV De Forma Canonica Celebrationis Matrimoniorum Mixtorum, in Acta et Documenta, Series II (Preparatoria), Vol. II, Pars 2 (1962), p. 263.

sincerity in relation to the promises. The revisions and modifications which this Schema underwent until it became part of the Decree on the Eastern Churches do not pertain to our study.¹⁷ We simply wished to point to the fact that the earliest Conciliar document related to mixed marriages made explicit mention of sincerity in relation to the promises.

The 1962 Schema on Mixed Marriages, prepared by the Commission for the Sacraments, substantially repeated the legislation of Canon 1060, with some modifications. It replaced the expression, "sectae haereticæ seu schismaticæ adscriptæ", with "communitati religiosæ non-catholicæ adscriptæ"; likewise it replaced the expression, "perversionis periculum", with "periculum defectionis a fide". Regarding Canon 1061, the following new formulation was proposed:

¹⁷ For a short treatment of this matter, see B. Konda, The Changing Attitudes of the Catholic Church towards Mixed Marriages (1971).

The Church does not dispense from the impediment of mixed religion, unless:

- a) there are just and grave reasons;
- b) the non-Catholic promises sincerely that he would not turn his partner away from the Catholic faith or impede him in the exercise of his religion; and both partners [promise sincerely] to baptize and bring up all the children exclusively in the Catholic faith;
- c) there is moral certitude regarding the fulfilment of the promises.¹⁸

The introduction of the word, sincerely, to describe the manner of making the promises ("sincere cautionem praestiterit" as opposed to "cautionem praestiterit" of Canon 1061) gains in significance when we recall the controversy which existed among canonists regarding the need of sincerity in the promises, and more particularly the argument of some that sincerity was not required explicitly.

The members of the Commission offered various comments on the proposed changes. Cardinal A. Bea of the Secretariate for Christian Unity suggested that the provision regarding

¹⁸ "Ecclesia super impedimento mixtae religionis non dispensat, nisi: a) urgeant iustae ac graves causae; b) sincere cautionem praestiterit coniux non catholicus de comparte non avertenda a fide catholica neque impedienda a suae religionis exercitio, et uterque coniux de universa prole catholice tantum baptizanda et educanda; c) moralis habeatur certitudo de cautionum implemento", Disceptatio de Impedimentis ad Matrimonium - De Matrimonio Mixto, Schemata Proposita a Commissione de Disciplina Sacramentorum, in Acta et Documenta, Series II, Vol. II, Pars 3 (1968), p. 1187.

the promise of the non-Catholic be altered to read: the non-Catholic promises seriously that he would in no way interfere with the freedom of conscience and religious exercise of his partner and also that he would not object to the Catholic upbringing of the children.¹⁹

The explicit mention of sincerity in relation to the promises was commended by Cardinal F. Spellman (New York, U.S.A.) as a confirmation of the recent Rotal jurisprudence maintaining that sincerity in the promises is required for the validity of a dispensation.²⁰ Cardinal V. Gracias (Bombay, India) suggested further clarification on sincerity in the promises. He proposed that it be stated explicitly whether or not insincerity on the part of one or both of the partners would invalidate the dispensation. Such a clarification, he argued, would be helpful in adjudicating matrimonial cases on the ground of insincere promises.²¹

Cardinal J. Frings (Köln, Germany) and Bishop V.J. Perrin (Arras, France) suggested that the prescription requiring moral certitude be altered to read: there is

¹⁹ See Acta et Documenta, Series 11, Vol. II, Pars 3., p. 1192.

²⁰ Ibidem, p. 1198.

²¹ Ibidem, p. 1201.

well-founded hope of the fulfilment of the promises.²²

The Preparatory Commission for the Sacraments had prepared six Schemata on the various aspects of marriage. However, on January 25, 1963, the Central Commission decided that all the Schemata on marriage should be reduced to one. Accordingly, a new Text on Marriage, consisting of a proemium and five chapters, was drafted. Chapter II, On Mixed Marriages, was prepared by members from the Commissions for the Doctrine of the Faith and Morals, the Sacraments, and the Secretariate for Christian Unity. This new Schema on marriage was sent to the Council Fathers, in July 1963, for their comments and observations.²³

The document contained some significant changes regarding the promises. Among the principles according to which mixed marriages should be regulated, the new text stated:

²² See Acta et Documenta, Series 11, Vol. II, Pars 3, pp. 1198, 1217.

²³ See Acta Synodalia Sacrosancti Concilii Vaticani Secundi, Vol. III, Pars 8 (1976), pp. 1148-1149.

Divine law prohibits marriage between a Catholic and a non-Catholic, if there is proximate danger to the faith of the Catholic.

Likewise, divine law obliges the Catholic partner not to fail in his duty toward the baptism and upbringing of the children in the Catholic faith.²⁴

The Church is prepared to grant a dispensation from the impediment, provided:

- 1) there are just and grave reasons;
- 2) the Catholic partner promises sincerely that he would fulfil his duty regarding the Catholic upbringing of the children;
- 3) likewise, the non-Catholic promises not to turn his partner away from the Catholic faith or impede him in the exercise of his religion, and also not to oppose the baptism and upbringing of the children in the Catholic faith;
- 4) there is well-founded hope of the fulfilment of the promises.²⁵

²⁴ "Ipsa lex divina coniugium inter partem catholicam et non catholicam vetat, si inde periculum immineat ne pars catholica a fide deficiat. Ipsa quoque divina lex catholicum urget coniugem ne suo desit officio prolem baptizandi et educandi in fide catholica", Schema Decreti de Matrimonii Sacramento, in Acta Synodalia, Vol. III, Pars 8, p. 1071.

²⁵ "Quapropter necesse est, ut: 1) adsint iustae et graves dispensationis causae; 2) pars catholica sincere cautionem praestet se officio curandi baptismum et educationem catholicam prolis satisfacturam esse; 3) pariter cautionem praestet coniux non catholicus de comparte non avertenda a fide catholica neque impedienda ab eius religionis exercitio, atque se non repugnaturum ut proles catholice baptizetur eiusque catholicae educationi provideatur; 4) adsit quoque spes bene fundata de cautionum expletione", Ibidem, p. 1072.

The Schema stated explicitly that the obligation to raise the children in the Catholic faith is imposed upon the Catholic partner by divine law itself. Accordingly, the proposed norm placed the primary responsibility for the religious upbringing of the children/on the Catholic partner himself; his obligation is stated before that of his partner; he is the one who has to promise sincerely that he would carry out his duty. (The non-Catholic's promise, in this regard, is one of non-opposition, one of non-interference. In addition to requiring the Catholic to make a sincere promise, the document had also incorporated the suggestions made by some bishops that the requirement of moral certitude be altered to a requirement of well-founded hope of the fulfillment of the promises.²⁶

Numerous observations on the proposed changes were made by the Fathers. In order to emphasize further the responsibility of the Catholic partner and also not to offend the conscience of the non-Catholic, Archbishop M. Baudoux

²⁶ The significance of these changes is described by J.M. Flader thus: "[...] Como novedades mas importantes pueden señalarse la introducción de la palabra sincere, por la que queda claro que garantías insinceras invalidarian la dispensa, y la nueva exigencia de solo spes bene fundata en vez de certeza moral, lo cual facilita la tarea de Ordinario que concede la dispensa, y concuerda mejor con la realidad de que es muy difícil obtener la certeza moral en todos los casos", in Los Matrimonios Mixtos ante la Reforma del Código de Derecho Canonico (1971), p. 99.

(St. Boniface, Canada), in the name of the Canadian Bishops and Experts for the Council, proposed the following modification: in addition to his sincere promise to fulfil his duty toward the Catholic upbringing of the children, the Catholic partner should also affirm that he has moral certitude regarding the fulfilment of the promises; and no promise is to be demanded of the non-Catholic.²⁷

Patriarch Maximos IV Saigh (Melchites of Antioch) raised the question as to how the Catholic partner could be asked to promise something which does not depend entirely on him; he cannot be asked to promise more than he is able to do. We should be satisfied to demand from the Catholic that he promise sincerely and honestly to do what in him lies toward the Catholic upbringing of the children. Regarding also the promise of the non-Catholic, the Patriarch raised the question as to how a non-Catholic, sincere and firmly convinced of his faith, could be expected to make such a promise.²⁸

Bishop J. Satowaki (Kagoshima, Japan) suggested the introduction of the provision of the equivalent promises into the proposed norms. He wished this provision to be added immediately after the clause requiring well-founded hope of

27 See Acta Synodalia, p. 1092.

28 Ibidem, p. 1096.

the fulfilment of the promises. When it is not possible or expedient to exact formal promises from the non-Catholic, the Ordinary may, in particular cases, grant dispensations, provided the Catholic partner is sincerely prepared to do his best to secure the Catholic upbringing of the children. The Bishop argued that if the non-Catholic is not really sincere, he would be giving only feigned or apparent promises.²⁹

A rather stricter manner of exacting the promises was proposed by Bishop J. Van Cauwelaert (Inongo, Zaire). He preferred the Catholic to make an oath to the effect that he would fulfil his duty regarding the religious upbringing of the children, and also a promise, a guarantee (cautio), concerning the sincere intention of the non-Catholic not to interfere with the religious exercise of his partner and not to object to the Catholic upbringing of the children. According to the Bishop, the oath is made to God as witness, but the promise, the guarantee, is given on behalf of the non-Catholic.³⁰

These observations made on the Schema illustrate the differing emphases some of the Fathers placed on the promises and on their sincerity. Before concluding our analysis of

29 See Acta Synodalia, p. 1110.

30 Ibidem, pp. 1113-1115.

them, we should like to note how the Commission viewed one general line of observations. Some bishops objected to the appeal to divine law in referring to the obligation of the Catholic partner to bring up the children in the Catholic faith. Some argued that divine law is rather a pastoral norm to be adapted to various conditions than a law in the strict sense. Others contended that divine law obliged both partners to follow each one's conscience, and that in our day and age we cannot resort to the argument of divine law as something reserved exclusively to the Catholic. Still others pointed out that, in the past, concessions were made by the Holy See and by bishops permitting the upbringing of children outside the Catholic faith, and that such concessions could not have been made if divine law were really involved.

In spite of these objections, the Commission felt that the obligation incumbent on the Catholic regarding the religious upbringing of the children does not derive solely from ecclesiastical law, but arises objectively from divine law. As for the concessions made by the Holy See in extraordinary circumstances, the Commission argued that in those cases the mandate of divine law was not being dispensed from, but a manner of dealing with difficult situations was being established. In those situations, the Church concluded that the sincere readiness of the Catholic to do his best to

secure the baptism and upbringing of the children in the Catholic faith satisfied the requirement of divine law, from which the Church cannot and does not intend to dispense. In the light of these considerations, the Commission felt that the Catholic teaching on so important a matter would be affirmed more clearly by the retention of the clause in the Schema.³¹

On January 23, 1964, the Central Commission decided that the entire Schema on Marriage should be reduced to a Votum containing only general recommendations to be considered for the revision of the CIC.³² In this Votum, the whole matter regarding mixed marriages was condensed thus:

In order to care for the conditions of persons in a more opportune way, safeguarding the demands of the divine law, the canonical prescriptions governing the impediments of mixed religion and disparity of worship be adapted in accordance with the norms established by the Council in the Decree on Ecumenism.³³

This document was sent to the Fathers, in April 1964:

31 See Acta Synodalia, pp. 1152-1153.

32 Ibidem, p. 1149.

33 "Quo opportunius condicioni personarum consulatur, ad matrimonia mixta quod attinet, salvis exigentiis iuris divini, leges canonicae de impedimentis mixtae religionis et disparitatis cultus accommodentur attentis peculiaribus normis quae Sacrosancta Synodus statuit de Oecumenismo", Schema Voti de Matrimonii Sacramento, in Acta Synodalia, p. 1146.

The decision to reduce the Schema to a simple Votum did not gain much support from the Fathers. Many complained that the text was too short, that it contained nothing concrete for the future legislation, and that it left everything indecisive and obscure.³⁴ In view of this criticism, an enlarged text, incorporating, as much as possible, the suggestions made by the Fathers, was prepared. This was distributed to the Council Fathers, on November 10, 1964, to serve as a basis for the deliberations.

The enlarged Votum contained a general statement on the mixed-marriage legislation, and prescriptions regarding the promises, canonical form, and liturgical celebration. The portion of the document pertinent to our study reads:

In order that canonical prescriptions may reflect the conditions of persons in a more opportune way, safeguarding the demands of the divine law, according to the mind of the Decree on Ecumenism and the Declaration on Religious Liberty, it is to be especially desired that the prescriptions regarding the marriage of a Catholic with a non-Catholic, and of a Catholic with an unbaptized person be separated. Hence, the following are to be observed:

a) In seeking a dispensation from the impediment, the Catholic partner is gravely bound in conscience to make a sincere promise to do what in him lies to secure the baptism and upbringing of all the children in the Catholic faith.

34 See Acta Synodalia, pp. 479-480.

At an opportune time, these promises to be made by the Catholic must be explained to the non-Catholic, and it must be established that he is not opposed to them; likewise, the non-Catholic should also be instructed on the essential purposes and properties of marriage, which are not to be excluded by either partner.³⁵

The obligation of the Catholic partner toward the religious upbringing of the children found a clear and articulate expression in this Votum. The Catholic partner to a mixed marriage is gravely bound in conscience to make a sincere promise to do what in him lies ("in quantum poterit") to secure the Catholic upbringing of all the children. The ultimate source of this obligation, as the document seems to imply, is the divine law itself. This obligation is incumbent on the Catholic as mediated through his own conscience. Hence, he has the primary duty and responsibility

35 "Ad matrimonia mixta quod attinet, quo opportunius, salvis exigentiis iuris divini, leges canonicae conditioni personarum consulant, ad mentem Decreti de Oecumenismo nec non declarationis de libertate religiosa, optandum est praecipue, ut separentur praescripta circa matrimonium partis catholicae cum parte baptizata non catholica et partis catholicae cum parte non baptizata. Dein vero sequentia serventur:

a) In omnibus matrimoniis mixtis ad impetrandam dispensationem impedimenti, pars catholica, graviter onerata conscientia, promissionem sinceram praestare debebit se, in quantum poterit, baptismum et educationem universae prolis esse curaturam.

De his promissionibus a parte catholica faciendis, partem non catholicam (tempestive) moneri oportebit, atque constare eam illis non repugnare; item certior pars non catholica fiat de finibus et proprietatibus essentialibus matrimonii a neutro contrahente excludendis", Votum de Matrimonii Sacramento, in Acta Synodalia, p. 469.

to fulfil this obligation. The sincere promise demanded of him by the Church does not seem to impose any additional obligation on him, rather, it would appear to be designed to aid him in realizing and carrying out an obligation he already has.

The Votum was introduced for discussion, on November 19, 1964. In his Relatio, Archbishop J. Schneider (Bamberg, Germany) pointed out some of its features. As far as mixed marriages are concerned, he noted, the Commission felt that the legislation of the Church should be subject to the divine law, as the former is to serve the latter. He also pointed out that, although some Fathers had suggested to appeal to the conscience of the couple rather than to divine law, the Commission could not accept that suggestion, because it feared that such a step would obscure the true mission of the Church and the reality of the matter. The Archbishop further noted that, while in the earlier Votum, because of its brevity, particulars regarding divine law and the innovations to be introduced in the ecclesial law were not exposed distinctly, in the present text the fundamental principles for the innovations are broached. Regarding the promises, in particular, he indicated that the new provision seemed to be quite in harmony with the emphasis on personal responsibility, which

people of our age seem to value highly.³⁶

With the foregoing introduction to the Votum, we can now analyze some of the deliberations of the Fathers.

Cardinal J. Döpfner (München, Germany) warned that any legislation on mixed marriages should not violate or even obscure the divine law, which obliges the Catholic not to place himself in proximate danger to his faith, and also to be prepared to do what in him lies to secure the Catholic upbringing of all the children. These exigencies of the divine law should always be satisfied; the Church can never dispense from them. Therefore, the Cardinal argued, the legislation of the Church should always be such as to aid the Catholic partner to fulfil faithfully the mandates of the divine law. In view of these considerations, he agreed fully with the proposals regarding the promises, because, according to him, they respected the divine law and also complied with the principles enunciated in the Decree on Ecumenism and the Declaration on Religious Liberty.³⁷

Cardinal J. Ritter (St. Louis, U.S.A.), on behalf of many bishops, praised the proposals regarding the promises, because he felt that they reflected the solicitude of the

³⁶ See Acta Synodalia, p. 481.

³⁷ Ibidem, pp. 627-628.

Church to respect the divine law and also the right of the individual. He observed that the new disposition would enhance the understanding of the divine law. By insisting on the personal responsibility of the Catholic for his own faith and for that of his children, the new disposition illustrated more clearly and more concretely the meaning of the divine law. Briefly, the proposed changes regarding the promises, while respecting the divine law and personal responsibility, also lessened the possibility of offense to the conscience of the non-Catholic.³⁸

On behalf of the Swiss Bishops, Bishop F. Charrière (Lausanne - Geneva - Fribourg, Switzerland) expressed approval of the proposals. However, he insisted that the obligation of the Catholic, deriving from the divine law, is so grave that the phrase, as far as in him lies, should be eliminated while referring to it. He feared that such expressions might tend to diminish the gravity of the obligation in the minds of the faithful.³⁹

Bishop P.Y. Taguchi (Osaka, Japan), on behalf of many Bishops of Japan and of other nations, agreed with the proposal that the promise be exacted only from the Catholic.

³⁸ See Acta Synodalia, pp. 629-630.

³⁹ Ibidem, pp. 654-655.

In support of his approval, he pointed out that, because of the particular attitude of the non-Christians in Japan, if the formal promises were exacted of them and even given by them, they would not be sincere promises.⁴⁰

A considerable alteration to the proposals on the promises was suggested by Bishop A. Carli (Segni, Italy). He preferred the obligation of the Catholic to be formulated thus: the Catholic partner, gravely bound in conscience, shall give a cautio ("cautionem praestare debebit") that he would secure the Catholic upbringing of all the children. The Bishop raised the question as to why the traditional cautio was changed to a simple sincere promise. He also suggested that the clause, as far as in him lies, be deleted, because he feared that it weakened the force of the legislation and that it might provide opportunity for slackness.⁴¹

The relationship between the sincerity of the promises and the validity of a dispensation also was questioned in the course of the deliberations. A suggestion to abolish the diriment impediment of disparity of worship was made by Archbishop F. Dorrego (Tangier, Morocco). It was prompted by the potential difficulties involving invalid dispensations on

⁴⁰ See Acta Synodalia, p. 657.

⁴¹ Ibidem, p. 706.

account of insincere promises. The Archbishop argued that, as the validity of the dispensation would depend on the sincerity of the promises, in particular cases it could cause anxiety, both for the couple and for the Superior who granted the dispensation, regarding the validity of the marriage. In order to avoid such anxieties, and in the spirit of the Decree on Ecumenism, he favoured the abolition of the diriment impediment of disparity of worship.⁴² Bishops J. De Reeper (Kisumu, Kenya) and D.S. Lourdusamy (Bangalore, India) suggested that it be clearly stated whether or not insincere promises would invalidate a dispensation. Bishop J. De Reeper also sought clarification as to whether the favourable attitude of the non-Catholic to the promises of his partner was required for the validity or only for the liceity of a dispensation.⁴³

A slightly different attitude to the proposals on the promises was expressed by Bishop H. Tillemans (Merauke, Indonesia), on behalf of the Episcopal Conference of Indonesia. He feared that the clause, gravely bound in conscience, sounded so legalistic as to imply that the obligation was being imposed from outside by law rather than deriving from

⁴² See Acta Synodalia, p. 681.

⁴³ Ibidem, pp. 717, 735.

the matter itself. According to the Bishop, the phrases, sincere promise and as far as in him lies, indicated sufficiently that the matter is of great importance, touching upon one's conscience. He also felt that the fulfilment of this obligation would be better emphasized by appealing to the responsibility deriving from one's faith rather than by burdening one's conscience.⁴⁴

A number of bishops suggested that the clause, as far as in him lies ("in quantum poterit"), be deleted. Some felt that this clause was superfluous, as it is understood in all positive laws. Others feared that it weakened the gravity of the obligation, and that it might provide occasion for slackness in those making the promises, and also that it might be an incentive for the Catholic to yield to the pressures of his partner who might be opposed to the Catholic upbringing of the children.⁴⁵

The deliberations lasted for only two days. The Votum as a whole was not voted on by the Council Fathers; likewise, the recommendations made during the deliberations or in writing were not subjected to any vote. On November 20,

⁴⁴ See Acta Synodalia, pp. 759-760.

⁴⁵ Ibidem, pp. 658, 668, 695-696, 698, 713, 714, 723, 739-740, 740-741.

1964, the Fathers decided to defer the Votum, together with the recommendations, to the Holy Father, so that he might act on it.⁴⁶

* * * * *

Concluding our analysis of the Conciliar developments, we should like to make the following observations. In contrast to the prescriptions of Canon 1061, the Conciliar documents explicitly required sincerity in the promises. Between the Schema of 1962 and the Votum of 1964, a progressive change took place as to the persons required to make the promises and also as to their content. The major factors which seem to have helped to bring about that change are these: the teaching of Vatican II on the nature of the Church, and, more particularly, the Conciliar understanding of the Church as the People of God, having different degrees of membership in it, as defined in the Dogmatic Constitution on the Church,⁴⁷ and the principles enunciated in the Decree on Ecumenism⁴⁸ and in the Declaration on Religious Liberty.⁴⁹

⁴⁶ See Acta Synodalia, pp. 670, 675.

⁴⁷ See AAS, 57(1965), pp. 5-67.

⁴⁸ Ibidem, pp. 90-107.

⁴⁹ See AAS, 58(1966), pp. 929-941.

The obligation of the Catholic partner to do what in him lies to secure the baptism and upbringing of all the children in the Catholic faith became gradually specified as one of the requirements of the divine law in mixed marriages. Although the final Votum did not specify what is of divine law in such cases, it implied that the provisions contained in it were to meet the exigencies of the divine law. Some members of the Commissions and later some Fathers considered the promises and their sincerity in terms of the validity of the dispensation. However, the sincere promise of the Catholic partner was generally considered as responding adequately to the demands of the divine law, to the emphasis placed on individual responsibility, and also to the respect due to the conscience and religious convictions of the non-Catholic partner.

CHAPTER VI

THE INSTRUCTION MATRIMONII SACRAMENTUM AND SUBSEQUENT LEGISLATION

1. Matrimonii Sacramentum.

The Instruction, Matrimonii Sacramentum, issued by the Sacred Congregation for the Doctrine of the Faith, on March 18, 1966, became effective on May 19 of the same year.¹ In its dispositive part, the document restated the consistent position of the Catholic Church regarding mixed marriages, while, at the same time, acknowledging the need for adapting its legislation governing them to current circumstances. The Church realizes that, especially in view of the social and cultural milieu of the present day, the sanctity of marriage and the faith of the Catholic partner need be safeguarded by all means ("omnino in tuto ponantur"), and also that the Catholic upbringing of the children needs to be cared for with the greatest possible diligence and effectiveness ("maxima, qua fieri potest, diligentia et efficacia curetur"). Hence, in keeping with the spirit of the Decree on Ecumenism, the Catholic Church finds it opportune to mitigate the rigour of its existing legislation on mixed

¹ Matrimonii Sacramentum, in AAS, 58(1966), pp. 235-239.

marriages, not with regard to what is of divine law, but with regard to certain ecclesial laws which the non-Catholics find offensive.

In its legislative part, the Instruction set forth norms regarding (1) the promises; (2) the canonical form; (3) the liturgical celebration; (4) pastoral care; and (5) the abrogation of censures. These norms, the document stated, were only experimental, but would be inserted in the revised CIC, if they stood the test of experience. The Instruction concluded with some brief exhortations. Pastors, in particular, were invited to explain the new regulations designed to meet the needs of the faithful in our day and to promote cordial relations between Catholics and non-Catholics; this explanation was to be given with charity toward Catholics, and with reverence toward the non-Catholics, respecting their religious convictions. The Catholic partner to a mixed marriage was exhorted to strengthen his faith and also to give good example to his partner and to the children.

The various aspects - historical, theological, juridical, pastoral, and ecumenical - of the Instruction have been

studied by many.² Hence, we do not consider it necessary to include here a detailed commentary on the document. Instead, with a view to examining the significance of sincerity, we intend to study the norms governing the promises, which were contained in the first two paragraphs of the legislative part:

The need to safeguard the faith of the Catholic partner must be kept constantly in mind, and the children's upbringing in the Catholic faith must be assiduously cared for (See Can..1060).

The Catholic partner's local Ordinary or the pastor must impress on him seriously his obligation to provide by all means ("omnino cavendi") for the baptism and upbringing of the children in the Catholic faith. The fulfilment of this obligation shall be ensured through an express promise by the Catholic partner. [...]

The non-Catholic partner must be informed of the grave obligation of the Catholic to safeguard, preserve, and profess his faith, and to baptize and raise the children in it.

2 See, for example, R. Banks, "The Instruction on Mixed Marriages", in HPR, 67(1966), p. 129-134; G. Baum, "Mixed Marriage - An Ecumenical Issue", in The Ecumenist, 4(1966), pp. 73-76; J. Bernhard - H. Legrand, "L'Instruction Matrimonii Sacramentum sur les mariages mixtes", in RDC, 16(1966), pp. 58-73; J. Funk, "Acerca de la Instrucción de la Sagrada Congregación 'Pro Doctrina Fidei' sobre los Matrimonios Mixtos", in Revista del Derecho Canonico, 16(1966), pp. 317-343; J.G. Gerhartz, "Die Mischehe, das Konzil und die Mischehen-Instruktion", in Theologie und Philosophie, 4(1966), pp. 376-400; J. Madden, "Mixed Marriages - The Instruction of the S. Congregation 'Pro Doctrina Fidei'", in ACR, 43(1966), pp. 153-161; L. Orsy, "Mixed Marriages: The New Instruction", in The Dublin Review, 240(1966 67), pp. 358-377; J. Berger, "Those Pre-Marital Promises", in HPR, 68(1968), pp. 575-579; T. Davey, "Mixed Marriages: A Note on the 'Promises'", in CR, 54(1969), pp. 559-567.

In order to ensure the fulfilment of this obligation, the non-Catholic partner is to be invited to promise sincerely and openly that at least he would not impede it. If, however, the non-Catholic felt that he could not make such a promise without violating his conscience, the Ordinary must refer the matter to the Holy See with all the details.³

In keeping with the spirit of ecumenism, no mention is made in the Instruction of the most severe prohibition of the Catholic Church ("severissime Ecclesia ubique prohibet") to mixed marriages involving a Catholic and a person belonging to a heretical or schismatic sect ("sectae haereticæ seu schismaticæ adscripta"), and of the prohibition of such unions by divine law, if there is danger to the faith of the Catholic partner and to that of the children ("si adsit perversionis periculum coniugis catholici et prolis, coniugium").

3 "Prae oculis semper habeatur periculum fidei a coniuge catholico propulsandum esse atque prolis educationem in religione catholica sedulo curandam (Cfr. can. 1060).

"Loci Ordinarius vel Parochus partis catholicae gravibus verbis inculcandam curabit obligationem omnino cavendi de futurae prolis baptismo et educatione in religione catholica; cuius obligationis adimpletio firmabitur per eiusdem partis catholicae expressam promissionem seu per cautiones. [...]"

"Eidem parti [acatholicae] nota fieri debet gravis coniugis catholici obligatio tutandi, servandi, profitendi propriam fidem, in eaque baptizandi et educandi prolem forte nascituram.

"Quoniam huiusmodi obligatio in tuto est ponenda, ipse nupturiens acatholicus invitetur, ut sincero apertoque animo promittat se id esse minime impediturum. Si vero pars acatholica putat se hanc promissionem sine laesione propriae conscientiae praestare non posse, Ordinarius casum cum omnibus adiunctis ad Sanctam Sedem referat", Matrimonii Sacramentum, p. 237.

ipsa etiam lege divina vetatur").⁴ However, with its reference to Canon 1060, the Instruction reaffirms the overriding concern of the Church for the faith of the Catholic and the upbringing of the children in the Catholic faith. This concern is expressed by way of introduction to the promises, thereby indicating their object and purpose.

Although the Instruction pointed out that changes were being made only with regard to certain ecclesial laws, and not with regard to what is of divine law, nowhere in the document was it stated explicitly what this latter entailed or what could not suffer mitigation. The reference to Canon 1060 seems to be the key to the understanding of this distinction. In a negative way, the Canon asserted that divine law required that the faith of the Catholic partner and of the offspring be safeguarded before a mixed marriage could be celebrated. The Instruction stated, in a positive way, that the need to safeguard the faith of the Catholic must be kept constantly in mind, and that the Catholic upbringing of the children must be assiduously cared for. From this statement, then, it would seem that this requirement is what cannot be mitigated, that this mandate is what is of divine law.

In view of the new norms, the Catholic partner is solely responsible for his faith; he has the grave obligation

⁴ See Canon 1060.

to safeguard, preserve, and profess it. To this end no promise was demanded of him. The non-Catholic was to be informed of this obligation, but no promise was to be exacted of him to ensure the religious freedom of his partner. The only promises required were to care for the upbringing of the children in the Catholic faith. In this duty, too, the primary responsibility was placed on the Catholic. After being instructed seriously about this obligation, he had to make an express promise regarding its fulfilment. To ensure the fulfilment of the obligation by the Catholic, the non-Catholic, after being instructed about it, was to be invited to promise sincerely and openly that, at least, he would not impede it. The promise he was invited to make seems to be one of non-opposition and non-interference; he was to be invited to recognize the obligation of his partner and not to place any obstacle in its way. Nonetheless, he was not obliged to make such a promise, if it were to violate his conscience.

The need of sincerity was mentioned explicitly in relation to the promise which only the non-Catholic was invited to make. However, what seems to be primarily involved here is the respect for the conscience and religious convictions of the non-Catholic. The invitation to make a sincere and open promise seems to suggest an appeal to his faith and

conscience. Because he was not obliged to make a promise, there was actually no room for any insincere or fictitious one. If, in good conscience, he could not promise sincerely, he was expected to refuse the invitation. This norm, then, would seem to have been designed also to help the non-Catholic to take his faith seriously and to live up to it. Bishop A. Mussio attached great significance to this norm, when he said:

It [Matrimonii Sacramentum] tells the non-Catholic member of a mixed marriage that the Church respects his conscience, his right to consideration, and supports his adherence to Christian principle. If understood rightly the decree [Instruction] shows the concern of the Church that the faith of all those involved in a mixed marriage be preserved as God would have it done.⁵

Some writers have examined the significance of sincerity in the promises according to the new norms. Father U. Navarrete took the position that the promises were no longer required for the validity of a dispensation from the impediment of mixed religion and disparity of worship. He concluded that there was at least a dubium iuris regarding the matter. He further argued that the great significance of the new norms governing the promises was that they have definitively solved the vexing question of insincere promises, and that they have thereby eliminated one ground for nullity.

⁵ A. Mussio, "A Bishop Speaks", in Mixed Marriage - An Honest Appraisal (1966), p. 110.

According to Navarrete, marriages could no longer be attacked on the ground of insincere promises; for, when the promises themselves are not required for the validity of the dispensation, their insincerity can hardly be a ground for nullity.⁶

Challenging Navarrete's position, Father H. Straub argued that the promises were still required for the validity of the dispensation. According to him, many passages in the Instruction indicated that the concern of the legislator over the fulfilment of the divine law mandates remained unchanged, especially in view of the fact that the Catholic partner was required to make an express promise. He agreed with Navarrete on the possibility of a dubium iuris, although he himself claimed to have none.⁷ In his reply to Straub, Navarrete reaffirmed his position stating that, in view of the over-all context and content of the Instruction, the promises and moral certitude of their fulfilment were no longer required for the validity of a dispensation.⁸

The view that the promises and moral certitude of their fulfilment were still required for the validity of the

⁶ See U. Navarrete, "Adnotationes ad Instructionem 'Matrimonii Sacramentum'", in Periodica, 55(1966), p. 761.

⁷ See H. Straub, "Controversia de Mente Instructionis 'Matrimonii Sacramentum' Quoad Obligationem Praestandi Cautiones", in Periodica, 56(1967), pp. 486-489.

⁸ See U. Navarrete, "Responsum Patris U. Navarrete, S.I.", in Periodica, 56(1967), pp. 489-504.

dispensation was expressed by J.M. Flader. As for the promises, he argued his case mainly from the inclusion of the phrase, sincerely and openly, in the promise of the non-Catholic. He stated that one of the arguments of those who held that sincerity in the promises was not required for the validity of the dispensation was that it was not so stated explicitly. "But, by describing the non-Catholic's promise as sincere and open, it appears that the legislator has definitively solved the doubt on the need of sincerity in the promises, as the Rota has done in three of its decisions. Furthermore, if the promises were not required for the validity of the dispensation, there was no reason for the legislator to make explicit mention of sincerity in the promise."⁹

We should like to make a few comments on the arguments advanced by Flader. It is true that sincerity was mentioned explicitly in connection with the promise of the non-Catholic. But it cannot be argued from this that the promises are required for the validity of the dispensation, even though one could probably argue that sincerity is required in the promise. According to the Instruction, only the Catholic partner was required to make a promise (cautio); the non-Catholic was only to be invited to make a promise, and was

⁹ See J.M. Flader, Los Matrimonios Mixtos, pp. 149-150.

expected to refuse to do so, if it were to violate his conscience. In this latter eventuality, alternatives were already contemplated in the document. It seems that Flader could have had a stronger case, had he argued that the promise of the non-Catholic had to be really sincere, because it was so stated explicitly. But, by emphasizing the inclusion of the phrase sincerely and openly, and combining it with the once disputed question of the invalidating effect of insincere promises, Flader seems to have failed to appreciate the over-all significance of the promise to be made by the non-Catholic and its place within the general context of the Instruction.

The last norm regarding the promises provided for situations where, independent of the good will of the couple, the Catholic upbringing of the children would be impeded by factors beyond their control. According to this norm, the provision of the equivalent promises, made earlier for some mission countries, was extended to all countries where such situations might exist. We should now like to proceed to examine how the Holy See settled the cases in which the non-Catholic could not, in good conscience, make the promise.

2. Replies from the S. C. for the
Doctrine of the Faith.

Although the Instruction had enjoined the Ordinaries to refer the conscientious-objection cases to the Holy See, no official data is available to indicate how many cases were referred and how they were dealt with. There are reports of the approximate number of cases processed within a certain period in France, England, Holland, and Germany;¹⁰ one writer has gathered information on the Chancery Practice in the United States;¹¹ another claims that since 1967 the Holy See regularly granted dispensations from the promises.¹² Our goal here is to examine the mind and attitude of the Holy See to the conscientious-objection situations in general, study its practice in individual cases, and try to establish the general principles involved in its decisions. In view of this, we analyzed some known cases, as presented by the Ordinaries, and the replies from the S. C. for the Doctrine

10 See R. Beaupère, "Mixed Marriages - The Education of the Children", in One in Christ, 4(1968), pp. 189-192; P. Hellbernd, "De Praxi circa Matrimonia Mixta in Germania Celebrata Sequenda", in Periodica, 59(1970), p. 181.

11 See V. Doyle, The Pre-Nuptial Promises in Mixed Marriages (1968), pp. 199-210.

12 See J.L. Hickey, "Christian Ecumenical Marriages: A Major Pastoral Concern", in Journal of Ecumenical Studies, 4(1970), p. 712.

of the Faith.¹³

The cases we studied extended over a period of ten months (May 1966 - February 1967). They involved petitions for dispensations from the impediments of mixed religion and, at times, ad cautelam, disparity of worship. Dispensations were sought either for the celebration of a marriage or for the convalidation of an attempted one. In most cases dispensations were granted; but there are a few instances in which they were refused. In considering each case, the Holy See seems to have attached great importance to the manner in which the local Ordinary presented the case, gave reasons in favour of a dispensation, and recommended it.

In deciding to grant or refuse a dispensation, the Holy See seems to have considered the attitude of the non-Catholic as of no great import, provided his refusal to promise was on grounds of conscience and he realized the obligation of his Catholic partner. It appears that dispensations were granted solely in view of the attitude of the Catholic. In all instances where a local Ordinary

¹³ These are found in: E.N. Surges, "Recent Roman Replies", in The Jurist, 28(1968), pp. 197-205; T.L. Bouscaren - J.I. O'Connor, Canon Law Digest, Vol. VI (1969), pp. 597-605; T. Davey, "Mixed Marriages: A Note on the 'Promises'", pp. 564-565; J.G. Gerhartz, "Mischehen ohne Kautelen - Zur römischen Dispenspraxis bei ungesicherter katholischer Kindererziehung", in Theologie und Philosophie, 44(1969), pp. 70-82.

assured that the Catholic partner seemed to have strong faith, that there appeared no danger to it resulting from the projected marriage, and that he seemed serious and sincere in his promise to do his best to secure the baptism and upbringing of the children in the Catholic faith, dispensations were granted. When the intention of the Catholic regarding his obligation toward the religious upbringing of the children was not manifest, the case was remitted to the Ordinary for clarification as to what the Catholic partner was prepared or able to do regarding that duty (quid pars catholica facere poterit pro educatione catholica prolis?),¹⁴ and the granting or refusal of the dispensation depended on whether or not he was prepared to do all he could to fulfil his duty.

The following is the formula of the rescript used in most cases in which dispensations were granted:

In this matter, I inform you that this S. Congregation commits to your prudence and conscience the concession of the dispensation (granting of the sanation), provided the Catholic partner promises formally that he would fulfil his obligation to provide by all means (obligationem omnino cavendi) for the baptism and upbringing of the children in the Catholic faith; and you have moral certitude of the fulfilment of the promise.

¹⁴ See E.N. Surges, "Recent Roman Replies", pp. 202, 205; T.L. Bouscaren - J.I. O'Connor, Canon Law Digest, Vol. VI, p. 604.

Furthermore, the non-Catholic partner is to be informed of the obligations whereby the Catholic is bound in conscience.

The pastor, for his part, shall be vigilant to see that the Catholic partner fulfils these obligations.¹⁵

In a Response to the Archbishop of New Orleans, December 6, 1966, the Sacred Congregation for the Doctrine of the Faith stated that by "promissio omnino cavendi", as contained in the rescript, was meant the same as "to do all what he is able to do".¹⁶ This interpretation seems to be of great importance, because dispensations were then granted in the following cases: when it was the declared intention of the non-Catholic not to bring up the children as Catholics;¹⁷ when it was morally certain that the children would, in fact, be brought up as non-Catholics;¹⁸ when it

15 "Ad rem Tecum communico hanc S. Congregationem dispensationis (sanationis in radice) concessionem prudentiae et conscientiae Excellentiae Tuae committere dummodo pars catholica formiter promittat se impleturam esse obligationem omnino cavendi de futurae prolis baptismo et educatione in religione catholica; et Excellentia Tua. moralem certitudinem habeat de eiusdem promissionis implemento.

"Praeterea pars acatholica certior fiat de obligationibus quibus pars catholica pro sua conscientia tenetur.

"Parochus, sua ex parte, invigilet ut pars catholica easdem obligationes adimpleat", in E.N. Surges, "Recent Roman Replies", pp. 198, 199.

16 Ibidem, pp. 200-201.

17 Ibidem, p. 203.

18 Ibidem.

was uncertain in what Church they might be brought up;¹⁹ and even when the Catholic had declared that he would not subject the marriage or the harmony of the family to undue strain in order to secure the Catholic upbringing of the children.²⁰ According to the mind of the Holy See, then, the determining factor for the granting of a dispensation was the sincere willingness and readiness of the Catholic partner to do all he was able to do in the circumstances to fulfil his duty. Hence, the other elements such as moral certitude regarding the fulfilment of the promise, the non-Catholic's awareness of the obligations of his partner, and the pastoral vigilance over the fulfilment of the obligations by the Catholic did not seem to have any decisive role.

It could be noted here that the operative phrase, to do all what one is able to do, used in the rescripts is not found in the Instruction itself, but is drawn from the Conciliar Votum (1964), describing the promise required of the Catholic partner.²¹ It should also be recalled that a number of bishops had recommended the deletion of "in quantum

19 E.N. Surges, "Recent Roman Replies", pp. 202-203.

20 Ibidem, p. 201.

21 See above pp. 123-124.

poterit" from the Votum.²² Thus, the Instruction, although departing from the Votum in this regard, was later implemented by the Holy See, at least in part, according to the Votum itself.

Turning now to the cases in which dispensations were refused, we find that the all-important determining factor in the decision was the weak faith of the Catholic partner and his refusal to manifest clearly his willingness and readiness to do all he was able to do toward the Catholic upbringing of the children. We should like to cite here the texts of two rescripts:

(1) As the case is presented, the reply of this S. Congregation must be negative, unless the man in question sincerely promises to do everything possible to secure the Catholic baptism and upbringing of future children.

(2) In this regard I inform you that the requested dispensation cannot be granted in the instance unless the Catholic party seriously promises that he will provide, in as far as he shall be able, for all the children to be baptized and educated as Catholics.²³

These replies again corroborate the fact that the sincere and serious promise of the Catholic to do what he was able to do toward the Catholic upbringing of the children was the

²² See above p. 130.

²³ T.L. Bouscaren - J.I. O'Connor, Canon Law Digest, Vol. VI, pp. 598, 604.

essential condition the Holy See placed in considering a positive reply.

From the many replies received in the various dioceses in Germany, one writer draws these general conclusions regarding the jurisprudence of the Holy See on this matter:

In the beginning there was some doubt in diocesan Curias regarding the cases to be referred to the S. C. for the Doctrine of the Faith. But, gradually we came to realize that the criterion for an affirmative reply was the good will of the Catholic partner or the sincerity with which he promised "that he would fulfil the obligation to provide by all means for the baptism and upbringing of the future children in the Catholic faith", as the S. Congregation generally stated in the rescripts. The S. Congregation did not make much distinction between the cases involving the refusal of the promises and those involving the canonical form; nor did it make any distinction between the cases of mixed religion and those of disparity of worship.²⁴

The same writer also claims that, while the earlier rescripts stated that the Ordinary should have moral certitude regarding the fulfilment of the promise, the later ones stated that he should have moral certitude regarding the sincerity of the promise.

We were not able to obtain a copy of a rescript containing this change. However, it would seem to be one of terminology more than one of substance. First of all, moral

²⁴ P. Hellbernd, "De Praxi circa Matrimonia Mixta in Germania", pp. 180-181; see also J.G. Gerhartz, "Mischehen ohne Kautelen", pp. 82-84.

certainitude mentioned in these rescripts does not seem to be de effectu secuturo, i.e., on the actual baptism and upbringing of the children in the Catholic faith. Rather, it regards the fulfilment of the Catholic's promise to do what he is able to do in the circumstances; it concerns the good will, good disposition, and actual sincerity with which he promises; and, again, it would seem that this moral certainty is the evidence the Ordinary is able to gather of the determination of the Catholic to do his duty as far as it in him lies. In view of these considerations, it could be argued that what was stated explicitly in the later rescripts was actually what was meant in the earlier ones. Nonetheless, the change in terminology should be noted.

In the light of the Curial practice we have just examined, one more question needs to be considered: that of divine law? The Instruction stated that only certain ecclesial laws, and not what is of divine law, were being updated. Although it did not state explicitly what is of divine law, it implied that it consisted in safeguarding the faith of the Catholic partner and in caring for the Catholic upbringing of the children. But dispensations were granted on the strength of the Catholic's promise to do what he was able to do, although it was foreseeable that he would not be able to do much in some circumstances. How, then, is the

divine law requirement regarding the upbringing of the children to be understood and respected?

In view of the practice of the Sacred Congregation, it seems clear that the divine law requirement does not consist in obtaining or even in ensuring the baptism and rearing of the children in the Catholic faith, but rather in ascertaining that the Catholic partner is aware of this serious obligation incumbent on him, and that he is seriously and sincerely prepared to do what in him lies to fulfil that duty in the particular circumstances. Such an understanding and interpretation of the divine law mandate in the mixed marriages is not entirely new in the jurisprudence of the Holy See. It was formulated in connection with the equivalent promises; it appeared, in one form or another, in the Conciliar documents and deliberations; and it will be one of the main points in the discussion on mixed marriages in the 1967 Synod of Bishops, to which we shall now turn.

CHAPTER VII

THE 1967 SYNOD OF BISHOPS

Legislation governing mixed marriages was one of the subjects discussed in the Synod of Bishops, held in Rome from September 29 to October 29, 1967. The discussions on mixed marriages lasted from October 16-21. They reflected the complexity of the problem in general as well as the particular pastoral situations, and pointed to the advisability of having only a very general legislation with the possibility of specific determinations to meet local needs. The various opinions and suggestions which emerged during the discussions were formulated into propositions and voted on by the Synodal Fathers. For the purpose of our study, we intend to examine here only those deliberations which touched upon the promises and their sincerity. Since the official acts of the Synod have not yet been published, we must rely on other sources, some of which have reproduced extensively the original documents.¹

¹ See G. Caprile, Il Sinodo dei Vescovi (1968), pp. 329-438: this work contains all the questions and summary and paraphrase of all the discussions, and an account of the daily workings of the Synod; U. Navarrete, "Matrimonia Mixta in Synodo Episcoporum", in Periodica, 57(1968), pp. 653-692: this article cites portions of the documents and gives a general summary of the discussions; G. Zizola, Il Sinodo dei Vescovi (1968), pp. 173-191, 353-377: this work contains a complete translation of the position paper, and also of the Relatio of Cardinal Marella.

A position paper (Quaestiones quaedam de matrimoniis mixtis), prepared jointly by members of the S. C. for the Doctrine of the Faith and the Secretariate for Christian Unity, was sent to the bishops, in July 1967, to serve as a basis for discussions. It consisted of an introduction and eight questions, each followed by various arguments.² The introduction reaffirmed the Church's constant concern and vigilance over marriages in general and mixed marriages in particular. The Church acknowledges that one mixed marriage differs from another and requires particular attention. Nevertheless, it feels that certain general principles should be kept in mind in re-examining the legislation in its theological, juridical, and pastoral aspects. The Church treats quite distinctly a marriage between a Catholic and a baptized non-Catholic and one between a Catholic and an unbaptized person; this distinction finds its expression in the canonical impediments of mixed religion and disparity of worship. Likewise, the marriage of a Catholic with a non-Catholic of an Eastern Rite is not treated in the same way as one between a Catholic and a baptized Christian who does not belong to an Eastern Rite. In the light of these principles, eight

² Quaestiones quaedam de matrimoniis mixtis, in Argumenta de quibus disceptabitur in primo generali coetu Synodi Episcoporum, Romae, Typis Polyglottis Vaticanis, 1967, Pars altera, pp. 82-91.

questions were proposed. They encompassed the terminology (questions 1 & 2), the promises (question 3), the retention of the canonical impediment (question 4), the canonical form (questions 5 & 6), and pastoral care (questions 7 & 8).

The question regarding the promises reads as follows:

In order to grant a dispensation from the impediment, is it sufficient for the competent authority to have moral certitude:

✓ (1) that the Catholic partner is in no danger of defecting from his faith and that he is prepared to do everything possible ("praeparatam esse omnia, pro posse, faciendi") to have the children baptized and brought up as Catholics;

(2) that the non-Catholic is aware of the obligation in conscience of his partner and does not, at least, exclude the baptism and upbringing of the children in the Catholic Church?³

Reasons favouring the proposal are:

(a) To impose more as a general norm would be to demand too much and would perhaps not sufficiently take into account the conscience of the non-Catholic partner; to demand less would be tantamount to neglecting the Church's duty of teaching and safeguarding the integrity of the faith.

3 "Utrum ad dispensandum super impedimento sufficiat quod auctoritas competens certitudinem moralem habeat: (1) partem catholicam nullum pati periculum deficiendi a propria fide, et praeparatam esse omnia, pro posse, faciendi ut proles catholice baptizetur et educetur; (2) partem autem non catholicam cognoscere obligationem conscientiae alterius coniugis et baptismum educationemque prolis in Ecclesia catholica saltem non excludere?", cited by U. Navarrete, "Matrimonia Mixta in Synodo Episcoporum", pp. 661-662.

(b) This formula appears to be a good and fitting one, because it implies that the competent authority could reach moral certitude either through some juridical formalities observed by the couple ("cautiones"), or from the particular circumstances ("cautiones aequipollentes"). It also implies that the non-Catholic is not bound to make a promise before ecclesiastical authorities; moral certitude could be had through other means: for example, through a promise made directly to the future spouse. [...]⁴

Reason against the proposal is:

The Church, having learned from experience, has, in the past, demanded much more from both partners.⁵

We cannot fail to note here that there is actually no mention of any promise as a condition for dispensation. According to the proposed formula, the only requirement for a dispensation was moral certitude in the competent authority

4 "(a) Plus aliquid imponere, pro norma generali, esset nimium quid expostulare et forsitan non sufficienter attendere ad conscientiam partis non catholicae. Minus quid expetere idem esset ac negligere Ecclesiae munus docendi et integritatem fidei tuendi.

"Formulatio haec bona et conveniens videtur cum in ea subintelligitur auctoritatem competentem sibi hanc certitudinem moralem acquirere posse: vel per solemnitates iuridicas factas ab utroque coniuge (cautiones), vel etiam ex attento examine circumstantiarum (cautiones aequipollentes). Subintelligitur partem non catholicam non necessario teneri ad promissiones coram auctoritate ecclesiastica dandas sed certitudinem moralem etiam alio modo obtineri posse v. g. per promissionem directe coniugi factam. [...]" cited by U. Navarrete, "Matrimonia Mixta in Synodo Episcoporum", p. 662.

5 "Attendendum est Ecclesiam saeculari experientia edoctam multo plus expostulasse sive a parte catholica sive etiam a parte non catholica", Ibidem.

regarding: (1) the protection of the faith of the Catholic, (2) his readiness to do everything possible ("omnia, pro posse") to provide for the Catholic upbringing of the children, (3) the non-Catholic's awareness of his partner's obligation in conscience, and (4) at least, his positive non-exclusion of the Catholic upbringing of the children. The promises, whether they are more or less juridical ("cautiones" or "cautiones aequipollentes"), were mentioned only in connection with the argument favouring the proposal. There they were mentioned in an explanatory manner, and as the plausible means of acquiring moral certitude referred to in the question.

The discussion on mixed marriages was introduced by Cardinal P. Marella (President, Secretariate for non-Christian Religions), on October 16. In his Relatio, the Cardinal dealt with the concern of the Church over those involved in mixed marriages; the biblical, patristic, and canonical prohibitions to such unions; the need for adapting the Church's legislation to meet the needs of the present time; the nature and purpose of the promises; and the relevance of the canonical form. We should like to state here the salient points from his comments on the cautiones, as they reinterpret their nature, scope, and need.

According to the Relatio, the cautio is the assurance ("securitas, garanzia"), obtained in a manner prescribed by law, on the safeguarding of the divine law ("tutionis iuris divini"). Understood in its formal sense, the cautio is the assurance itself; in its causal sense, it is the manner of giving this assurance. Cautio, understood in its formal sense, is

the assurance of the dispensing authority in judging that the conditions of the divine law are verified, i.e., the Catholic partner would not suffer the loss of his faith and that all the children would be brought up in it.

In the causal sense, cautio is

the manner or the means, suitable enough, to provide the assurance mentioned above.

This manner or means, determined by the Church according to various circumstances, could in practice be a juridical formality by which the couple guarantee the dispensing authority that they would fulfil the obligations of the divine law. This formality could be, according to circumstances, a promise, an oath, a declaration, a pledge, etc., all of which are referred to in the ecclesiastical documents simply as "cautio". This manner or means could also be the particular circumstances in which the couple find themselves, and which, without any juridical formality, guarantee that the divine law would be respected. These circumstances are referred to in the ecclesiastical documents as "cautio

aequipollens".⁶

The ultimate scope and purpose of the cautio in the causal sense is to provide moral certitude regarding the observance of the divine law. It matters little, therefore, whether the Church obtains this certitude through some juridical formalities observed by the couple or from other sources, like the conditions of persons, time, and place. However, this moral certitude on the part of the dispensing authority is absolutely required for the valid granting of a dispensation. This is evident from the very nature of the matter, the practice of the Holy See, and the disposition of the law.

A number of responses from the S. C. of the Holy Office were cited in order to illustrate that the Church always insisted on the need of moral certitude regarding the fulfilment of the promises as condition for dispensation. Interestingly enough, one of the documents cited (Reply of the Holy Office to the Bishop of Cork, Ireland, June 23, 1909) does not require moral certitude of the fulfilment of the promises, but instructs the bishop to grant the dispensation, provided he is certain of the actual present sincerity of the

⁶ See G. Caprile, Il Sinodo dei Vescovi, pp. 341-342; U. Navarrete, "Matrimonia Mixta in Sinodo Episcoporum", pp. 662-663; G. Zizola, Il Sinodo dei Vescovi, pp. 368-369.

promises ("purché l'Ordinario sia certo che al presente le promesse sono sincere, conceda").⁷

The cautio which is absolutely necessary for the ecclesiastical authority to grant a dispensation is to be understood in its formal sense, i.e. the assurance that the conditions of the divine law are verified ("securitas tuitio-nis iuris divini"). This assurance for the dispensing authority amounts to his moral certitude, without which he cannot grant a dispensation. This is why in some of the documents of the Holy See it is stated that the cautiones are founded on divine and natural laws, and, as such, could not be dispensed from by any human authority. These words could be understood correctly only if the cautio is taken in its formal sense. The cautio in the causal sense is the means adopted by the Church, according to circumstances, to ascertain that the conditions of the divine law are verified. In confirmation of this distinction between what is of divine law and what is determined by the Church according to various circumstances, the response of the Holy Office to the Ordinaries of China, December 12, 1917, was cited. In this document a clear distinction was made between the cautio imposed by the divine natural law, which hence could not be

⁷ See G. Caprile, Il Sinodo dei Vescovi, pp. 342-343; G. Zizola, Il Sinodo dei Vescovi, pp. 369-371.

omitted, and the means or formality with which the guarantee is given, and which the Church indicates according to various circumstances. The Relatio then pointed out that such a distinction is contained also in the legislation of Canon 1061.

In view of these explanations of the cautio, its nature, purpose, and necessity, two concluding statements were made: (1) from the practice of the Holy See, and in view of the legislation of Canon 1061 and Matrimonii Sacramentum, the cautio understood in the formal sense, i.e. moral certitude in the dispensing authority that the divine law would be respected, is absolutely necessary for a dispensation; (2) the dispensing authority can obtain this assurance or certitude not exclusively from a juridical formality observed by the couple, but also by other means indicated in the documents of the Holy See, although not mentioned explicitly in the CIC, and which are properly called "cautiones aequipollentes".⁸

The Relatio then posed the question as to whether, as a rule, the cautiones aequipollentes would be sufficient for a dispensation, or whether the cautiones should be

⁸ See G. Caprile, Il Sinodo dei Vescovi, pp. 344-345; U. Navarrete, "Matrimonia Mixta in Synodo Episcoporum", pp. 664-665; G. Zizola, Il Sinodo dei Vescovi, pp. 371-373.

required ordinarily in a juridical form, and the cautiones aequipollentes be reserved to those situations where one or both of the partners might be reluctant to give them formally. Concluding his comments on the cautio, Cardinal Marella pointed to the need for understanding properly the expression everything possible ("omnia, pro posse") in connection with the obligation of the Catholic partner toward his children. Portions of the Explanatory Note, sent to the Ordinaries of Japan, in 1938, were cited to illustrate the point.⁹

Although the Relatio did not deal directly with the promises, much less with their sincerity, it seems to have reaffirmed, in different terminology, the consistent thinking of the Church behind the mixed-marriage promises. In our analysis of the sources of Canon 1061,¹⁰ we pointed out that many documents of the Holy See used conditiones and cautiones interchangeably, although, in effect, the conditiones were understood to be the mandate of the divine law. This mandate is what no human authority could dispense from, even if it was referred to, at times, as cautiones or cautelae. In general, the cautiones were understood as the means determined

⁹ See G. Caprile, Il Sinodo dei Vescovi, pp. 346-348; U. Navarrete, "Matrimonia Mixta in Synodo Episcoporum", p. 665; G. Zizola, Il Sinodo dei Vescovi, pp. 373-376; see also above pp. 67-70.

¹⁰ See above p. 25, footnote 28.

by the Church, ordinarily in terms of promises, pledges, guarantees, in order to obtain moral certitude of the fulfilment of the divine law. By means of these promises and moral certitude concerning their eventual fulfilment, the Church felt morally assured that the conditions of the divine law were verified.

Although the promises were the means ordinarily employed by the Church, it always recognized that moral certitude on the fulfilment of the divine law could be had through other means. The cautio in the formal sense, as explained in the Relatio, is what is to be obtained or acquired by the cautio in the causal sense. Their relationship, thus, is that of a means to an end, as the cautiones were understood traditionally as a means to fulfil the conditiones, the mandate of the divine law. It is precisely because of this relationship that the promises were to be true and sincere. The Relatio itself admitted that, whatever means or manner are chosen according to circumstances, they should be capable of providing moral certitude that the requirement of the divine law would be met. In view of these considerations, the Relatio does not seem to have departed substantially from the traditional understanding of the cautiones, but appears to have further illustrated and elaborated it.

Although many Fathers spoke on the question of what should be exacted of the partners as a condition for dispensation, sincerity in the promises does not seem to have entered directly into the discussions. Only two of the Fathers appear to have even mentioned it. Cardinal R. Santos (Manila, Philippines) agreed that moral certitude of the fulfillment of the divine law would be sufficient for the dispensation, although he admitted that the means of obtaining this certitude could vary. He then pointed out that the guarantees or promises, written or even given under oath, would mean nothing unless they are given sincerely.¹¹ Bishop N. Edelby (Melchites, Antioch) pointed out that a sincere promise to do what in him lies toward the Catholic upbringing of the children could be exacted of the Catholic partner. However, he suggested that too much emphasis should not be placed on the Catholic baptism, as long as the children are baptized validly and incorporated into the Church.¹² In spite of the explicit mention of sincerity in these interventions, nothing very significant could be concluded from it.

What appears to be most significant in the deliberations of the Fathers was their common accord on an affirmation of the divine law obligation of the Catholic partner to

¹¹ See G. Caprile, Il Sinodo dei Vescovi, p. 382.

¹² Ibidem, p. 391.

do everything possible to provide for the Catholic upbringing of the children. It was generally agreed that no dispensation could be granted without moral certitude of the fulfilment of the divine law requirement. Opinions, however, differed as to the manner of acquiring this certitude. With few exceptions, the majority declared in favour of the equivalent promises, provided they afforded a true moral certitude, and not a simple presumption. It was suggested by some that the Catholic partner be ordinarily required to promise seriously, sincerely, and explicitly, in writing or at least orally, to do what is possible for him to safeguard his faith and that of the children. Others wanted him to manifest, in some form, his readiness and firm determination to do everything possible to fulfil his duty toward the Catholic upbringing of the children. In this regard, however, some felt that the expression everything possible should not be insisted upon to the extent of disrupting the peace and harmony of the family.

On the question of what was to be exacted from the non-Catholic in order to ensure the fulfilment of the obligation of his partner, opinions varied widely. All agreed on the principle of freedom of conscience, and on the spirit of the Decree on Ecumenism and of the Declaration on Religious Liberty. There was common accord that no promise was to be exacted of the non-Catholic. As to the minimum that could be

demanded of him, some felt that the greatest concession the Church could make in this regard had already been made in Matrimonii Sacramentum. Others felt that the non-Catholic's awareness of his partner's obligation and of his disposition at least not to exclude positively and a priori the Catholic upbringing of the children would be sufficient. Still others felt that his awareness of his partner's obligation would alone be sufficient for the dispensation.

In the final vote on Question 3, taken on October 28, a vast majority expressed approval of the first part (Placet: 137, Placet iuxta modum: 42, Non placet: 6; Suffragia nulla: 2); a smaller number, still a majority, gave approval to the second part (Placet: 92, Placet iuxta modum: 72, Non placet: 13, Suffragia nulla: 10).¹³

* * * * *

The major preoccupation in the deliberations and decisions of the Synod was not, as evidenced from our analysis; the question of the promises or of their sincerity. The Synodal Fathers were to explore the ways of revising the legislation in view of the Conciliar documents and the pastoral experience gained from the application of the

¹³ See U. Navarrete, "Matrimonia Mixta in Synodo Episcoporum", pp. 667, 669.

provisional norms of Matrimonii Sacramentum. In this effort, they seem to have brought into clearer light the crucial issues involved in mixed-marriage legislation. In his intervention at the Synod, Cardinal B. J. Alfrink (Utrecht, Holland) expressed very concisely the dilemma facing the Church in dealing with the matter:

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.¹⁴

In the light of the above considerations, and viewed as an aspect of the Church's continuous effort to find just and effective means to minister to those involved in mixed marriages, the deliberations and decisions of the Synod could be said to have further clarified and confirmed the theological, pastoral, and juridical aspects to be kept in mind in any future legislation. A concrete reflection of these clarifications and confirmations would appear in Matrimonia Mixta, which we shall study next.

¹⁴ Cited by P. Hebblethwaite, Understanding the Synod (1968), p. 87; see also G. Caprile, Il Sinodo dei Vescovi, p. 379.

CHAPTER VIII

THE MOTU PROPRIO MATRIMONIA MIXTA AND THE PROPOSED NEW LEGISLATION

1. Matrimonia Mixta.

On February 19, 1969, Pope Paul VI appointed a special Commission of Cardinals to study anew the mixed-marriage legislation and to prepare a document which would further reform it in view of the experience gained from the application of the provisional norms of Matrimonii Sacramentum and in the light of the discussions of the 1967 Synod of Bishops. Toward the end of 1969, the Commission presented the document to the Holy Father. On January 28, 1970, it was distributed to the Episcopal Conferences, whose observations were examined by the Commission, around the end of March.¹ The final text was published under the date of March 31, 1970, taking effect on October 1 of the same year.²

¹ See P. Felici and I. Willebrands, "[Matrimonia Mixta]", in Communicationes, 2(1970), pp. 108-109; J. Tomko, "De Litteris Apostolicis 'Matrimonia Mixta'", in ME, 95(1970), pp. 174-175. This author served as Secretary to the Commission.

² Matrimonia Mixta, in AAS, 52(1970), pp. 258-263.

In its introductory part, the document³ sets forth some general principles and facts regarding the entire matter. A marriage between a Catholic and a non-Catholic, baptized or unbaptized, is a mixed marriage. However, neither in doctrine nor in law does the Church place on the same level a marriage between a Catholic and a baptized non-Catholic, and one between a Catholic and an unbaptized person. The Church has always expressed concern and exercised vigilance over mixed marriages, and does so especially today on account of the conditions of our present times. It continues to discourage them, because, rather than serving as means of promoting Christian unity, they tend, in general, to cause division within the Christian family. Nevertheless, since the Church wishes to respect the natural right of man to marry and have children, and also to be faithful to its pastoral mission and duty to assist and care for those involved in mixed marriages, it attempts to provide legislation designed to respect the natural right of man as well as the principles of divine law.

³ For commentaries, see, for example, K.T. Kelly, "A New Deal for Interchurch Marriages - Comments on the Recent Motu Proprio", in CR, 55(1970), pp. 621-645; U. Navarrete, "Commentarium Canonicum ad Litt. Ap. Motu Proprio Datas 'Matrimonia Mixta'", in Periodica, 59(1970), pp. 423-469; F. Timmermans, "New Norms for Mixed Marriages", in AFER, 12(1970), pp. 341-345; J. Tomko, "De Litteris Apostolicis 'Matrimonia Mixta'", pp. 171-187; W. Daniel, "Mixed Marriages - The New Promises", in ACR, 48(1971), pp. 196-210.

The principles of divine law are then enunciated:

The faithful should, therefore be taught that, although the Church somewhat relaxes ecclesiastical discipline in particular cases, it can never remove the obligation of the Catholic partner, which, by divine law, namely, by the plan of salvation instituted through Christ, is imposed according to the various situations.

The faithful should, therefore, be reminded that the Catholic partner to a mixed marriage has the duty to preserve his own faith, and, therefore, is never permitted to expose himself to a proximate danger of losing it.

Furthermore, the Catholic partner in a mixed marriage is obliged, not only to remain steadfast in his faith, but also, as far as possible ("quantum fieri potest"), to see to it that the children be baptized and brought up in that same faith, and also receive all those aids to eternal salvation which the Catholic Church provides for its members.⁴

The document acknowledges that, in view of the divine law obligation of the Catholic partner, the matter of the

4 "Edoceantur ergo fideles Ecclesiam, quamvis in particularibus casibus vinculum ecclesiasticae disciplinae aliquantum relaxet, numquam tamen posse partis catholicae obligationem auferre, quae lege divina, ipso videlicet ordine salutis per Christum instituto, pro variis casuum adiunctis imponitur.

"Ideo fideles commoneantur officium esse penes catholicum coniugem propriae fidei conservandae, ac propterea ipsi numquam licere proximo illam amittendi periculo sese offerre.

"Praeterea in matrimonio mixto pars catholica obligatione tenetur non solum perstandi in fide, sed etiam, quantum fieri potest, curandi, ut proles baptizetur et in eadem fide educetur atque omnia salutis aeternae accipiat subsidia, quae Ecclesia catholica filiis suis suppeditat", Matrimonia Mixta, p. 259.

upbringing of the children is a particularly difficult one, because "both husband and wife are bound by that responsibility and may by no means ignore it or any of the obligations connected with it".⁵ However difficult this problem might be, the Church endeavours to face it through its legislation and pastoral care.

The Motu Proprio then points to the fact that a uniform canonical discipline on mixed marriages today is not possible, but that it must be adapted to various cases and circumstances. In order to illustrate how concerned the Church has been to adapt its legislation to our times, the document reviews the progressive attempts on the part of the Church from the time of the Second Vatican Council until the present. The introductory part concludes with the statement that the norms to follow are in accordance with the mind of the Conciliar Decree on Ecumenism and of the Declaration on Religious Liberty, and also in careful consideration of the wishes expressed in the 1967 Synod of Bishops.

The legislative part of the document comprises 17 norms. They deal with the nature of the impediments (norms 1 & 2); the dispensation (norms 3 & 4); pastoral instruction (norms 5 & 6); the canonical form (norms 8 & 9); liturgical

5 Matrimonia Mixta, p. 259.

celebrations (norms 11 & 13); joint pastoral care (norm 14); the abrogation of penalties (norm 15); convalidation (norm 16); the competence of the Episcopal Conferences (norms 7, 9, 10 & 12); and the possibility of recourse to the Holy See (norm 17).

The prevailing spirit of the document appears to be ecumenical and pastoral. Although the Church discourages mixed marriages, it does not prohibit them most severely, as stated in Canon 1060. Likewise, there is no mention of persons belonging to a heretical or schismatic sect, but the impediment of mixed religion exists for a marriage between a Catholic and a baptized non-Catholic ("inter duas personas baptizatas, quarum altera sit catholica, altera vero non catholica"). The reason for the prohibition of such a union is that by nature it is an obstacle to the full spiritual communion of the couple ("cum natura sua plenae spirituali coniugum communioni obstat"). The Church is prepared to dispense from both impediments, provided there is a just cause ("dummodo iusta causa habeatur"). Although it is aware of the difficulties deriving from mixed marriages, it attempts to overcome them by its legislation and pastoral watchfulness, skill, and care.

The document makes no explicit mention of the divine law prohibition of a mixed marriage, if there is danger to

the faith of the Catholic partner and of the offspring, as stated in Canon 1060. However, the question of divine law appears to be brought out sufficiently by reference to it a number of times. First, the document states that the Church's legislation governing mixed marriages should observe scrupulously the principles of divine law while respecting the natural right of every person to contract marriage.⁶ Secondly, it admits explicitly that, although the Church somewhat relaxes its own discipline in particular cases, it can never dispense the Catholic partner from the obligation imposed upon him by divine law.⁷ Finally, the document affirms that, in adapting the Church's legislation to the conditions of our times, care should be taken that divine law is not violated.⁸

Matrimonia Mixta appears to be unique in its concrete description of the divine law.⁹ While the earlier documents referred to the need of respecting or safeguarding the divine law, this Motu Proprio seems to spell out what it is, how it is imposed, and what it entails in the concrete situation of

6 Matrimonia Mixta, p. 258.

7 Ibidem, p. 259.

8 Ibidem, p. 260.

9 See J. Tomko, Matrimoni Misti, pp. 86, 121-122.

a mixed marriage. The divine law is described as the very plan of salvation instituted through Christ (ipse ordo salutis per Christum institutus), which imposes certain obligations upon every individual, upon all those who participate in that plan, according to the various situations. It would seem that, in this description of the divine law, there is also an ecclesiological dimension, because the document seems to imply that the Church itself is part of that plan of salvation, and that, ultimately, it alone has the mandate to interpret the extent and requirements of the divine law in concrete situations.¹⁰ Accordingly, the Church declares that, in a mixed marriage, the Catholic partner is obliged, by divine law, to preserve his own faith, not to expose himself to a proximate danger of losing it, and to see, as far as in him lies, that the children be baptized and brought up in the same faith. From these obligations, the Church feels, it cannot dispense; rather, it has the duty to aid the Catholic to be mindful of them.

The following requirements, then, are the means established by the Church to aid the Catholic partner, to remind him of his obligations and also to support him in fulfilling them:

¹⁰ See Lumen Gentium, par. 8, in AAS, 57(1965), pp. 11-12.

(norm 4) In seeking from the local Ordinary dispensation from an impediment, the Catholic partner shall declare that he is ready to remove dangers of falling away from the faith. He is also gravely bound to make a sincere promise to do everything in his power ("gravi obligatione tenetur promissionem sinceram praestandi, se omnia pro viribus facturam esse") to have all the children baptized and brought up in the Catholic Church.¹¹

The declaration and the sincere promise demanded of the Catholic partner are actually a restatement of what was described earlier as his divine law obligation. The declaration concerns his own faith, and the sincere promise refers to the religious upbringing of the children. Through these the Catholic partner is being asked to give concrete expression and testimony to the awareness and acceptance of his responsibility before God to live his faith and to pass it on to his children. Hence, by exacting this declaration and sincere promise from him, the Church does not seem to place any additional obligation on him; rather, they seem to be designed as a reminder of his personal obligations and responsibility, and as a support in carrying them out.¹²

¹¹ "Ad impetrandam ab Ordinario loci dispensationem impedimenti, pars catholica declaret se paratam esse pericula a fide deficiendi remove. Eadem insuper gravi obligatione tenetur promissionem sinceram praestandi, se omnia pro viribus facturam esse, ut universa proles in Ecclesia catholica baptizetur et educetur", Matrimonia Mixta, p. 261.

¹² See J. Tomko, "Aspetti teologici della problematica dei matrimoni misti", in La Collegialità Episcopale per il Futuro della Chiesa (1969), pp. 452-457; J. Coventry, "Inter-Church Marriage I", in The Way, 14(1974), p. 145.

The obligation to preserve, profess, and propagate his faith is incumbent on every Catholic.¹³ It appears to derive from his own faith, his acceptance of it, and his understanding of its role in the plan of salvation instituted through Christ. He is bound by this obligation always and everywhere, and no one can dispense him from that. In view of these considerations, the Church has consistently warned him of the possible danger to his faith in the context of a mixed marriage. Marriage is an intimate and total community of life and love,¹⁴ and, if the couple do not share the same faith and religious convictions, the conjugal communion could not be said to be total,¹⁵ and there could also be danger to each other's faith,¹⁶ leading up to religious compromise and tolerance at best and indifferentism at worst.

In the present legislation, therefore, the Catholic partner is asked to assume actively the responsibility regarding his own faith. His obligation is stated explicitly

13 See Lumen Gentium, par. 8, 11, 14, in AAS, 57(1965), pp. 11-12, 15-16, 18-19; Gaudium et Spes, par. 48, in AAS, 58(1966), pp. 1067-1069; Apostolicam Actuositatem, par. 11, in AAS, 58(1966), pp. 847-849; Gravissimum Educationis, par. 3 & 4, in AAS, 58(1966), pp. 731-732.

14 See Gaudium et Spes, par. 48.

15 See Matrimonia Mixta, pp. 258, 259, 260-261.

16 See P. Felici and I. Willebrands, "Matrimonia Mixta", p. 110.

and absolutely. While his duty toward the children is described in such conditional terms as as far as possible and to do everything possible, no contingency is admitted in his responsibility regarding his own faith. Rather, in order to give evidence that he is aware of his duty and is determined to persevere in his faith, he is required to make a declaration of his readiness to remove dangers of falling away from it.

* * * * *

The Motu Proprio, in its introductory part, stated that, by divine law, the Catholic partner in a mixed marriage is obliged, as far as possible ("quantum fieri potest"), to see that the children be baptized and brought up in his own faith. In order to remind him of this obligation and also to ask him to recognize it publicly, the document now states that he is gravely bound ("gravi obligatione tenetur") to make a sincere promise ("promissionem sinceram praestandi") to do everything possible ("se omnia pro viribus facturam esse") to have all the children baptized and brought up in the Catholic Church. It could be noted here that this formulation appears to have been derived from the 1964 Conciliar Votum.¹⁷

¹⁷ See above pp. 123-124.

Matrimonia Mixta reaffirms the grave obligation of the Catholic partner toward the religious upbringing of his children. However, the manner in which this responsibility may be carried out in the concrete situation of a mixed marriage seems to allow for certain contingency. While the previous legislation appears to have insisted on the Catholic's duty to procure or provide for the baptism and Catholic upbringing of the children, the present one seems to insist on his sincere intention and determination to do everything possible to achieve that end. He is not being asked to guarantee that the children would actually be raised as Catholics, but to undertake seriously and sincerely his responsibility regarding these obligations and to be prepared to do what he can in the concrete circumstances, although his best efforts may not always be successful. As a matter of fact, there appears to be an acknowledgement in this new provision that his sincere efforts may not always bring about the desired goal.

The obligation of the Catholic toward the children seems to be formulated in relative and conditional terms, because it must also be understood in relation to the faith and religious convictions of his partner. The Catholic should respect the conscience of his partner, as he too has the duty to live his faith and pass it on to the children.

Neither partner should ~~be~~ deprived of the right to raise the children; neither should shirk this responsibility.¹⁸ In view of these considerations, the Catholic partner could only be asked to promise sincerely to be prepared to do what is possible according to the various situations. Monsignor J. Tomko describes this obligation of the Catholic in these words:

The promise is of grave obligation, and it should be sincere, not superficial or fictitious, but genuine; and it should be made truly conscious of one's responsibility. It could be noted that this promise binds the Catholic partner not only at the time of the dispensation or the celebration of the marriage but throughout his life, so that he should always see to the Catholic upbringing of the children [...].¹⁹

* * * * *

We should now like to examine what, according to the Motu Proprio, the non-Catholic is expected to do, so that the Catholic partner could fulfil his obligations toward the children. Norm 5 states:

18. See Matrimonia Mixta, p. 259; Dignitatis Humanae, par. 5, in AAS, 58(1966), p. 993; see also the proposed new Canon 332, in Communicationes, 10(1978), p. 105.

19 J. Tomko, "De Litteris Apostolicis 'Matrimonia Mixta'", p. 181.

At an opportune time, the non-Catholic partner should be informed of these promises [declaration and promise] which the Catholic partner has to make, so that it is clear that he is truly cognizant ("adeo ut constet ipsam vere consciam esse") of the promise and obligation of the Catholic partner.²⁰

The legislation in the CIC (Canon 1061, § 1, 1 & 2) demanded that the non-Catholic promise to remove all dangers to the faith of his partner, and also to have all the children baptized and brought up solely in the Catholic faith. In view of Matrimonii Sacramentum, in order to ensure the fulfilment of the obligations of his Catholic partner, the non-Catholic was to be informed of them, and was to be invited to promise sincerely and openly that at least he would not impede it. According to the present legislation, no promise whatsoever is demanded of him. He is only to be informed of the obligation and promise of his partner, so that he be aware of them. What seems to be implied in this new provision is the divine law obligation of the Catholic partner on the one hand, and, on the other, the principles of Ecumenism and Religious Liberty, and also the responsibility and right of the non-Catholic partner to the religious upbringing of the children.

²⁰ "De his promissionibus a parte catholica faciendis, pars non catholica tempestive certior fiat, adeo ut constet ipsam vere consciam esse promissionis et obligationis partis catholicae", Matrimonia Mixta, p. 261.

In the Conciliar Votum (1964) and in the decisions of the 1967 Synod of Bishops, it was desired, as a requirement for the granting of a dispensation, that the non-Catholic be not opposed to the promise of his partner and not exclude the baptism and upbringing of the children in the Catholic Church.²¹ No such requirement is mentioned in the Motu Proprio concerning his attitude to the promise and obligation of the Catholic partner. This omission appears to be of some significance. For, it would seem that it is in view of this modification that no mention is made in the document regarding the need of any moral certitude of the fulfilment of the promise by the Catholic, because the success of his sincere efforts will depend on the attitude of his partner, which, according to the present legislation, need not necessarily be determined at the time of the promise, dispensation, or marriage. It could be determined in the course of their marriage.

In the light of the present legislation, then, it could be argued that, even if it is not certain that the children would be brought up as Catholics, or even if it is foreseen that they would not be, the Catholic partner's sincere promise to do everything possible would be sufficient for a dispensation. This line of argument could be confirmed

21 See above pp. 123-124, 154.

by some of the replies of the Sacred Congregation for the Doctrine of the Faith subsequent to Matrimonii Sacramentum, where dispensations were granted solely on the strength of the Catholic's determination and intention to do his best, although it was foreseen that all the children would not actually be brought up as Catholics.²²

* * * * *

Before concluding our examination of the Motu Proprio, we should like to touch briefly upon another aspect of the present legislation, that of the relationship between the declaration and sincere promise to the granting of the dispensation. Norm 7 refers to the declarations and promises which are always required ("declarationes et promissiones, quae semper requiruntur"). However, commentators, in general, agree that these are not required for the valid granting of a dispensation. They also express the view that moral certitude regarding the fulfilment of the promise is not

²² See above pp. 146-147.

required for a dispensation.²³

At least three commentators have raised the question of the relationship between the sincerity of the promise and the validity of a dispensation, and have concluded that insincerity would not affect the validity of the dispensation and that it could no longer be a ground for nullity.²⁴ In this connection, however, it could be noted that, in view of the emphasis Matrimonia Mixta seems to place on the personal responsibility and obligation of the Catholic partner, his sincerity should be presumed and should not be called into question at a later date, even if the children were not raised as Catholics. Indeed, the Motu Proprio itself seems

23 See U. Navarrete, "Commentarium Canonicum de Litt. Ap. 'Matrimonia Mixta'", pp. 440-448; A.J. Bevilacqua, "Some Problems regarding Episcopal Faculties", in The Jurist, 31 (1971), pp. 658-659; E. de Bhaldraithe, "A Point of Law in the Motu Proprio on Mixed Marriages", in CR, 56(1971), pp. 399-401; M. Petroncelli, "Presupposti dei Matr. Misti e Limiti 'in Iure Condito'", in Ius Populi Dei, Vol. III(1972), pp. 430-431; J.E. Lynch, "Ecumenical Marriages", in Proceedings of CLSA, 35(1973), p. 40; "Mixed Marriages in the aftermath of 'Matrimonia Mixta'", in Journal of Ecumenical Studies, 11(1974), p. 646; I. Ting Pong Lee, "Novissimae Facultates Missionariae", in CPR, 54(1973), p. 348; F. Bersini, "La Legge vigente sui Matrimoni Misti", in ME, 99(1974), p. 113; J. Coventry, "Interchurch Marriage I", p. 148; B. O'Higgins, "Mixed Marriages: the 'Cautiones'", pp. 220-221.

24 See B. Filipiak, "De Matrimoniis Mixtis", in Il Diritto Ecclesiastico, 82(1971), pp. 164-165; P.J. Shierse, "New Mixed Marriage Norms", in The Catholic Lawyer, 17(1971), p. 128; G.T. Barberena, "Los Matrimonios Mixtos en Perspectiva Ecumenica", in Lex Ecclesiae (1972), p. 378.

to suggest that his sincere promise must be understood in relation to many other factors.

* * * * *

As a final point in our study of Matrimonia Mixta, it could be stated that a significant clarification seems to have emerged from the Motu Proprio on the meaning and extent of the divine law obligation regarding the upbringing of the children of mixed marriages. The document appears to suggest that it consists solely in the Catholic partner's awareness of his grave responsibility and his determination to do his best to achieve that goal in the concrete circumstances; any guarantee or assurance or even moral certitude that the children would actually be raised as Catholics does not seem to be of divine law.²⁵ As we shall see later, many Episcopal Directories would attach great importance to this aspect of the document in their interpretation and application of it for their respective territories. Against this background of Matrimonia Mixta, we now intend to study the proposed new legislation on mixed marriages.

²⁵ See J. Tomko, "De Litteris Apostolicis 'Matrimonia Mixta'", p. 177.

2. The Proposed New Legislation.

According to a report in Communicationes,²⁶ the Coetus de Matrimonio delayed the revision of Canons 1060-1064 and 1070-1071 until the promulgation of Matrimonia Mixta. Upon its promulgation, new canons were drafted and adapted for the Code, according to the very spirit and, as far as possible, even the letter of the document ("ad eiusdem mentem imo, quantum fieri potuit, ad eiusdem litteram").²⁷ Thus, the Coetus approved the pertinent norms of the Motu Proprio as the new canons. As for the nature of the impediments, the reason for prohibition of mixed marriages, the motive for dispensation, competence of the Episcopal Conferences, and pastoral care, it codified, with very little or no adaptation, norms 1-3, 7, 12 and 14 of Matrimonia Mixta; and, as for the dispensation, declaration and sincere promise, the Coetus codified, verbatim, norms 4 and 5 of the Motu Proprio.²⁸

The complete text of the revised canons on mixed marriages is contained in the Schema on the Sacraments (1975),²⁹

26 See Communicationes, 5(1973), p.70.

27 Ibidem.

28 Ibidem, pp. 70-72.

29 Schema Documenti Pontificii Quo Disciplina Canonica De Sacramentis Recognoscitur, [Romae], Typis Poliglottis Vaticanis, 1975.

distributed to the Episcopal Conferences, Roman Congregations, and Ecclesiastical Faculties, for consultation and comments. The impediments of mixed religion and disparity of worship are treated in Titulus VII, De Matrimonio, Canons 276-280 and 285-286. Canons 276 and 285 dealing with the nature of the impediments and the reason for the prohibition of mixed marriages, Canon 278 and 280 describing the competence of the Episcopal Conferences, and Canon 279 pointing to the need of pastoral care are all derived substantially, and in some cases literally, from norms 1, 2, 7, 12 and 14 of Matrimonia Mixta. Through Canon 286, the provisions of Canons 277-280 regarding the dispensation, declaration, and sincere promise are extended also to the impediment of disparity of worship. As these canons do not seem to contain any significant alteration from the norms of the Motu Proprio, they require no comments here.

Canon 277, describing the circumstances under which a dispensation may be granted from either of the impediments, reads as follows:

§ 1. The local Ordinary may dispense from the impediment of mixed religion, provided there is a just and reasonable cause and the conditions outlined in par. 2, 3 and 4 are fulfilled.

§ 2. In seeking a dispensation, the Catholic partner shall declare that he is ready to remove dangers of falling away from the faith; he is also gravely bound to make a sincere promise to do all in his power to have all the children baptized and brought up in the Catholic Church.

§ 3. At an opportune time, the non-Catholic partner should be informed of these promises which the Catholic partner has to make, so that it is clear that he is truly cognizant of the promise and obligation of the Catholic partner.

§ 4. Both partners are to be clearly instructed on the ends and essential properties of marriage, not to be excluded by either partner.³⁰

The Canon refers to Matrimonia Mixta, norms 2-6, as its source. However, some differences, both "in spirit and in letter", from these norms are apparent in this proposed Canon.

The Motu Proprio required a just cause ("dummodo iusta causa habeatur") for a dispensation; but Canon 277 requires a just and reasonable cause ("dummodo iusta causa et rationabilis habeatur"). This alteration does not seem to be very significant, as a just cause will also be a reasonable one in the ordinary sense of these words.

³⁰ "Can. 277 (CIC 1061). § 1. Ab impedimento mixtae religionis Ordinarius loci dispensationem concedere potest dummodo iusta causa et rationabilis habeatur et impletae sint conditiones de quibus in §§ 2, 3 et 4.

"§ 2. Ad impetrandam dispensationem, pars catholica declaret se paratam esse pericula a fide definiendi remove; eadem insuper gravi obligatione tenetur promissionem sinceram praestandi, se omnia pro viribus facturam esse, ut universa proles in Ecclesia catholica baptizetur et educetur.

"§ 3. De his promissionibus a parte catholica faciendis, pars non catholica tempestive certior fiat, adeo ut constet ipsam vere consciam esse promissionis et obligationis partis catholicae.

"§ 4. Ambae partes edoceantur de finibus et proprietatibus essentialibus matrimonii, a neutro contrahente excludendis", Schema de Sacramentis, p. 78.

Although Matrimonia Mixta states a number of times that the declaration and sincere promise are always required, nowhere is this requirement mentioned as a condition for the dispensation, with a si or dummodo or similar expression.³¹ As a matter of fact, the Motu Proprio treats in two separate paragraphs of the need for a just cause and the need for the declaration and sincere promise; and dummodo appears only in the first paragraph in relation to the just cause.

Again, according to the Motu Proprio, the need to inform the non-Catholic of the obligation and promise of his partner does not at all seem to be a requirement for dispensation. The document appears to require this intimation quite independently from what the Catholic partner is required to do while seeking a dispensation. Likewise, the need for instructing the couple on the ends and essential properties of marriage does not in any way seem to be a requirement for dispensation. Although these two norms of Matrimonia Mixta follow immediately the norm regarding the declaration and sincere promise required for the dispensation, they do not seem to be part of that requirement, and their relation to the dispensation is only indirect in view of the common responsibility of the couple to respect each other's religious convictions and to accept marriage as the Church sees it.

³¹ See Canons 11 and 39, CIC.

Norms 5 and 6 of the Motu Proprio, then, would seem to be designed for pastoral and instructional purposes rather than as requirements for the dispensation. As we shall see later, the Episcopal Directories, in considering a dispensation, would take into account, in most cases, only the declaration and sincere promise of the Catholic partner.

Canon 277, however, renders norms 4-6 of Matrimonia Mixta in the same vein as three conditions without the fulfillment of which, at least by implication, a dispensation could not be granted. In the present formulation of the Canon, the conditional dummodo seems to extend not only to the need for a just and reasonable cause, but also to the declaration and sincere promise, the intimation to the non-Catholic, and the instruction of the couple. This, however, appears to be a departure from the provisions of the Motu Proprio, as the Canon seems to exact more than provided for by the document. Yet, in one of the more recent issues of Communicationes, we find reference to an attempt to rectify and clarify the situation.

In view of the suggestions received on the proposed canons, the Consultors for the Commission for the Codification decided to suppress the prohibitive impediments.³² In

³² See Communicationes, 9(1977), pp. 132-134.

the light of this change, they also felt that the Canons on mixed marriages had to be reorganized.³³ We are interested here mainly in the proposed revision of the Canons governing the dispensation, declaration, and sincere promise.

In the April 29, 1977 meeting of the Coetus, it was decided that the formulation of Canon 277 should be altered to read: "[...] the Catholic partner shall declare. [...] and also make a sincere promise [...]" . The reason for this revision, the Coetus argued, was that it would indicate more clearly that these are two conditions for the dispensation ("ita clarius apparet duas esse conditiones ad dispensationem impetrandam").³⁴

The relationship between these conditions and the dispensation, however, was clarified during the discussion on Canon 278. A suggestion was made to the effect that it be clearly stated in the Canon whether or not the promises ("promissiones") were required for the validity of a dispensation. To this suggestion, the Consultors responded:

33 Communicationes, 9, p. 353.

34 "De Can. 2 (= 277 schematis) -- Unus Consultor proponit ut in § 2 dicatur: '... declaret ... remove, atque promissionem sinceram praestet se omnia pro viribus etc, ...'; ita clarius apparet duas esse conditiones ad dispensationem impetrandam. Propositio omnibus placet", Ibidem, p. 355.

From the tenor of the law, it is evident that only a just cause is required for the validity of the dispensation ("ex tenore legis clare evinci ad validitatem requiri tantum iustam causam"), and that the norm governing the promises does not affect the validity of the dispensation ("ideoque normam de 'promissionibus' non afficere validitatem dispensationis").³⁵

Hence, the Consultors concluded that nothing was to be added to the Canon in this regard.

In the light of the discussions, Canon 277 was revised to read as follows:

§ 1. From this prohibition [of contracting a mixed marriage] the local Ordinary may dispense if (si) there is a just and reasonable cause, and provided (dummodo) the following conditions are fulfilled.

1) The Catholic partner shall declare that he is ready to remove dangers of falling away from the faith, and also make a sincere promise to do all in his power to have all the children baptized and brought up in the Catholic Church.³⁶

³⁵ "Suggestum etiam est ut clare dicatur an 'promissiones', de quibus sermo est in canone, requirantur ad validitatem dispensationis vel non.

"Consultores respondent ex tenore legis clare evinci ad validitatem requiri tantum iustam causam ideoque normam de 'promissionibus' non afficere validitatem dispensationis, quare nihil est addendum in canone", Communicationes, 9, p. 356.

³⁶ "Can. 2 (= Can. 277) § 1. Ab hac prohibitionem loci Ordinarius dispensationem concedere potest, si iusta et rationabilis causa habeatur et dummodo impletæ sint conditiones quæ sequuntur:

"1) pars catholica declaret se paratam esse pericula a fide definiendi remove atque sinceram promissionem præstet se omnia pro viribus facturam esse, ut universa proles in Ecclesia catholica baptizetur et educetur", Ibidem, p. 357.

The rest of the Canon has undergone no revision except in the alteration of "pars non catholica" to "altera pars" (n. 3).³⁷

The revised Canon calls for some brief comments. Although it was agreed among the Consultors that only a just cause is required ("requiri tantum iustam causam") for the validity of the dispensation, that cause is again described in the Canon as just and reasonable cause ("si iusta et rationabilis causa habeatur").

According to the Consultors, the formulation regarding the declaration and sincere promise was altered in order to illustrate more clearly that these are two conditions for the dispensation. This alteration, however, seems to place both the declaration and the sincere promise on the same level. This appears to be contrary to the mind of the Motu Proprio. It dealt with the declaration and sincere promise separately on two different levels in order to emphasize the various degrees of obligations, in order to indicate the absolute character of one's obligation toward his own faith and the relative character of his obligation toward the religious upbringing of the children. As we shall see later, in keeping with the mind of Matrimonia Mixta, most of the Episcopal Directories treat the two obligations with

³⁷ Communicationes, 9, p. 358.

differing emphases.

Although the Consultors pointed out that the norm governing the promises (more precisely, declaration and promise) does not affect the validity of the dispensation, the three numbers (1-3) of Canon 277, describing the conditions for the dispensation are introduced by dummodo. In view of the explanation provided by the Consultors, nn. 1-3 are not for the validity of the dispensation, regardless of their introduction by dummodo. This would certainly be more in keeping with the provisions of Matrimonia Mixta. It is worth noting that in the 1978 issue of Communicationes we find reference to an attempt to clarify this point further. The proposed new formulation of the Canon leaves out dummodo, and provides that the local Ordinary is not to grant a dispensation unless the conditions mentioned in the subsequent numbers are verified. Accordingly, the revised text reads:

From this law [prohibiting mixed marriages] the local Ordinary may dispense if there is just and reasonable cause; he may not grant a dispensation ("eam ne concedat") unless the following conditions are verified.³⁸

³⁸ "Ab hac lege loci Ordinarius dispensationem concedere potest, si iusta et rationabilis causa habeatur; eam ne concedat nisi impletis conditionibus quae sequuntur: [...]", in Communicationes, 10(1978), p. 127.

CHAPTER IX

THE EPISCOPAL DIRECTORIES I: THE DECLARATION AND SINCERE PROMISE

In its introductory part, Matrimonia Mixta acknowledges that a uniform canonical discipline on mixed marriages is not possible today, but that it must be adapted to the various circumstances and situations.¹ In view of this, the Motu Proprio, after establishing certain norms and requirements to safeguard the principles of divine law, enjoins the Episcopal Conferences to make provisions for the application of these norms in their respective territories:

(norm 7) Within its own territorial competence, it is for the Bishops' Conference to determine the way in which these declarations and promises, which are always required, shall be made: whether by word of mouth alone, in writing, or before witnesses; and also to determine what proof of them there should be in the external forum, and how they are to be brought to the knowledge of the non-Catholic partner, as well as to lay down whatever other requirements may be opportune.²

1 See Matrimonia Mixta, p. 259.

2 "Conferentiae Episcoporum est, secundum proprii territorii competentiam, statuere modum quo hae declarationes et promissiones, quae semper requiruntur, faciendae sint, sive ore tantum, sive etiam scriptis, sive coram testibus; tum rationem definire qua de ipsis et in foro externo constet et pars acatholica certior reddatur; itemque edicere quae alia sint, pro opportunitate postulanda", Matrimonia Mixta, p. 261.

This provision of Matrimonia Mixta has been considered by many as one of its most noteworthy features, since it seems to leave a great deal of flexibility and latitude to the Episcopal Conferences in applying the legislation to the pastoral needs of their regions.³ The Holy See is only to be informed of the decisions taken by the Conferences.⁴

A detailed comparative study of the various "Episcopal Directories, however valuable it might be, is beyond the scope of our present research.⁵ Our main task here is to examine how, in the process of the implementation of the general norms, the various Episcopal Conferences have interpreted the obligations of the Catholic partner and what significance they have attached to the declaration and sincere promise required of him.

³ See, for example, T.J. Connolly, "Mixed Marriages", in ACR, 47(1970), p. 270; F. Timmermans, "New Norms for Mixed Marriages", p. 345; J. Tomko, "De Litteris Apostolicis 'Matrimonia Mixta'", pp. 185-186; Matrimoni Misti, p. 86; [Anonymous], "Matrimonia Mixta: Some Episcopal Directories", in One in Christ, 7(1971), p. 217; J. Hotchkin, "Mixed Marriage Review and Preview", in HPR, 71(1971), p. 344; J.E. Lynch, "Ecumenical Marriages", p. 38; I. Willebrands, "Oecuménisme 1970, Rapport du Cardinal Willebrands", in DC, 68(1971), p. 619; G. and E. Marcheselli, Matrimoni Interconfessionali e Comunità Cristiana (1973), pp. 121-122.

⁴ See Matrimonia Mixta, p. 262.

⁵ Two articles analyzing a limited number of Directories are available: R. Beaupère, "Les évêquats d'Occident ont précisé la nouvelle législation des 'mariages mixtes'", in Informations catholiques Internationales, 373 (1970), p. 19-22; [Anonymous], "Matrimonia Mixta: Some Episcopal Directories", pp. 216-233.

For the purpose of our study we gathered information concerning the implementation of Matrimonia Mixta by forty representative Episcopal Conferences. Seven of these had not issued any Directories, but left the local Ordinaries to establish guidelines for their respective territories. Information received from three of the Conferences was not particularly relevant or useful to our purpose. The thirty Directories⁶ which we were able to study showed a considerable diversity; they seemed to represent a wide range of attitudes and interpretations reflective, obviously, of the pastoral situations; and they seemed to differ one from another both in form and in content.

Most of the Directories have done simply what the Motu Proprio demanded of the Episcopal Conferences: established the modalities of the declaration and promise, decided the manner for proof of them in the external forum, and adopted the means of bringing them to the attention of the non-Catholic partner. Some Directories have only taken into consideration the marriage between two baptized persons;

6 These Directories are by the Episcopal Conferences of: Argentina, Australia, Austria, Belgium, Canada, Ceylon (Sri Lanka), Chile, China, England and Wales, France, Germany, Holland, India, Ireland, Italy, Japan, Malta, New Zealand, North Africa, Peru, Rhodesia, Scotland, South Africa, Spain, Switzerland, Tchad, Thailand, Togo, United States, and Zaire.

others, while considering both impediments, have made no distinction regarding the requirements; yet others have made special provisions for marriages between a Catholic and an unbaptized person. A few of the Directories have commented on the document in general and on the declaration and promise in particular in their theological, juridical, ecumenical, and pastoral perspectives. We shall give particular consideration to these after examining how the Directories have complied, in general, with norm 7 of the Motu Proprio.

1. Manner of Exacting the Declaration
and Promise.

According to Matrimonia Mixta, the Catholic partner is required to make a declaration of readiness ("pars catholica declaret se paratam esse") regarding the protection of his own faith, and a sincere promise ("promissionem sinceram") concerning the religious upbringing of the children (norms 4 & 7). However, in norm 5, the document speaks of the promises (promissiones) which the Catholic partner has to make, obviously referring to both the declaration and the promise. This confusion in terminology appears also in some of the Directories. Thus, some require two promises; others, although they mention the declaration and promise separately, refer to them later as the promises; still others speak of two declarations or one declaration of intent encompassing

both obligations:

There appears to be a general preference for written declaration and promise. Most often this amounts to the Catholic partner's signing a prepared statement or formula. A small number of Directories require the presence of witnesses, who, too, are to sign the document. Only oral declaration and promise are demanded by some. Here we find a wider variety. In some instances, a prepared statement or formula is read by the Catholic partner; in other cases, he is free and is even encouraged to formulate his own. In some other cases, he responds to the questions put to him by the priest, in order to ascertain his awareness of his obligations and also his positive attitude and disposition to them; the priest uses a prepared formula or is free to make his own. Whether the declaration and promise are made orally or in writing, they are always made in the presence of an ecclesiastical authority (local Ordinary or his delegate, parish priest or his delegate, or deacon), and his attestation is considered proof that they have been made. In all instances, they are to be made in the course of the pre-nuptial inquiry, instructions, or preparation.

The Directory of the Chinese Bishops' Conference contains a particular provision in this regard. As a rule, the declaration and promise are to be made in writing.

However, if the non-Catholic partner has serious objection to having them in writing, they could be made orally before the priest or before two witnesses; and this fact is to be noted in the Matrimonial Register.⁷

2. Necessity of the Declaration and Promise.

The Motu Proprio uses four different phrases to indicate the need of the declaration and promise from the Catholic partner: he shall declare ("pars catholica declaret"), he is gravely bound to make a sincere promise ("gravi obligatione tenetur promissionem sinceram praestandi"), these promises which the Catholic partner has to make ("de his promissionibus a parte Catholica faciendis"), and, these declarations and promises, which are always required ("hae declarationes et promissiones, quae semper requiruntur") (norms 4, 5 and 7). We pointed out earlier that commentators agree, in general, that the declaration and promise are not required for the validity of a dispensation.⁸

⁷ "Tales autem promissiones aut declarationes generatim scripto fiant.

"In casu autem quo pars acatholica serio opponatur talibus promissionibus aut declarationibus scriptis, fiant oretenus. Quo in casu fiant coram sacerdote vel coram duobus testibus. Factum vero istud notetur in libro matrimoniali [...]". Ex Actis Conf. Ep. deibus 24-30 iunii 1970, norm 1.

⁸ See above pp. 181-182.

Of the thirty Directories we examined, twenty-nine require some form of declaration of intention and promise, some form of manifestation of an awareness and commitment, in a more or less juridical form, from the Catholic partner concerning his obligations toward his own faith and the religious upbringing of the children. The Statement by the Dutch Episcopal Conference appears to be unique in its form and content. It is a joint declaration by the Dutch hierarchy, the Dutch Reformed Churches, and the Dutch Lutheran Church.⁹ In this agreed Statement, no declaration or promise, in whatever form, is required of the Catholic partner. We shall refer to this document in more detail later.

A few Directories make explicit mention of the need for the declaration and promise, some in general terms, others in relation to the dispensation and permission for a mixed marriage. Thus, the Japanese Directory states that, according to Matrimonia Mixta, the Catholic partner is required to make two promises ("duo promittere debet").¹⁰ Hence, before a dispensation is granted, he has to promise, according to the formula, to preserve faithfully his Catholic faith and also

⁹ A Joint Declaration by Dutch Catholics and Protestants, May 8, 1971, in One in Christ, 8(1972), pp. 93-96.

¹⁰ "Secundum Motu Proprio 'Matrimonia Mixta' (31/III/1970) pars catholica duo promittere debet: [...]", Normae pro Matrimoniis mixtis, May 1970, norm 1.

to do his best toward the baptism and Catholic upbringing of the children.¹¹

The Canadian Directory¹² points out that,

The celebration of a mixed marriage cannot be authorized [...] when the Catholic party refuses to promise to be faithful to the Catholic faith and to see to the Catholic baptism and education of children to be born from the marriage (norm 6).

According to the Directory of England and Wales,¹³

In leaving it to the Episcopal Conference to determine the way in which the declaration and promise are to be made the Pope insists again that this declaration and promise are always required if a dispensation is to be granted (p. 18).

The Pastoral Guide, issued by the Episcopal Conference of New Zealand,¹⁴ states explicitly that,

11 The formula of the promise is available only in Japanese; the English translation was obtained through the kindness of Fr. J.P. Labelle, SS.

12 Mixed Marriage Legislation for Canada, approved by the Canadian Catholic Conference Plenary Assembly - September 20-24, 1971.

13 Mixed Marriages. A Revised Directory by the Episcopal Conference of England and Wales, 1977.

14 Pastoral Principles and Norms of the Motu Proprio "Matrimonia Mixta", Resolutions of New Zealand Episcopal Conference, April 1971. A Pastoral Guide, Issued by authority of the New Zealand Episcopal Conference, June 1976.

Only when the Bishop has received the Catholic's promise to avoid anything that would endanger the practice of the faith and to do all in his or her power to have the children baptized and brought up in the Catholic Church will he grant permission to celebrate a mixed marriage [p. 5].

The Episcopal Conference of North Africa deals only with the mixed marriages involving the impediment of disparity of worship. In their Directory, the Bishops state that, for matters regarding marriages between a Catholic and a baptized person, they have decided that one should refer to the French Directory. Regarding the declaration and promise, the North African Directory requires the priest to discuss the matter with the Catholic partner and give assurance that he has accepted in all sincerity the demands of the Church. And this, the Directory adds, is a condition for the validity of the dispensation.¹⁵

Among the directives established by the Bishops' Conference of Peru, we read the following statement: "The promise of the Catholic partner, which is necessary in every

¹⁵ "Le prêtre établira un compte rendu suffisamment élaboré des entretiens qu'il aura eus et de leurs conclusions sous forme de déclaration d'intention; il donnera l'assurance que les exigences de l'Eglise sont sincèrement acceptées, ce qui est une condition de validité de la dispense", Directives pour l'application de MOTU PROPRIO sur les mariages mixtes, [no date], number 14.

case, shall be in writing".¹⁶

The Statement by the Scottish hierarchy insists that,

When permission is granted by the Church for a mixed marriage, safeguards to the faith of the Catholic partner, and safeguards to the faith of any children who may be born of the marriage, are still required. These promises must be given by the Catholic and intimated to the non-Catholic.¹⁷

Citing norm 4 of the Motu Proprio, the Directory of the Bishops' Conference of Togo argues that the expressions there indicate that the two conditions are required for the validity of the dispensation. Hence, the parish priest who petitions the dispensation is to give assurance that the above conditions have been verified.¹⁸

According to the Directory of the United States,¹⁹ the declaration and promise of the Catholic are "necessary

16 "La promesa de la parte católica, necesaria en cualquier caso, será formulada por escrito", Disposiciones Vigentes de la Conferencia Episcopal sobre Matrimonios Mixtos, Promulgada en 1972 (16-IX-72), norm 6.

17 The Directory of the Scottish hierarchy was read at all Masses in Scotland, on October 4, 1970; it is available in The Tablet, October 10, 1970, p. 991.

18 "[...] Ces expressions montrent que ces deux conditions sont exigées pour la validité de la dispense. Il importe que les curés qui présentent la demande de dispense se portent garants que ces dispositions sont réalisées", Motu Proprio "Matrimonia Mixta" Etablissant les Normes Relatives aux Mariages Mixtes et Dispositions communes de la Conférence Episcopale du Togo, 21 janvier 1971, p. 6.

19 Statement of the National Conference of Catholic Bishops on the Implementation of the Apostolic Letter on Mixed Marriages, January 1, 1971.

for dispensation from the impediment to a mixed marriage" (norm 5).

3. Sincerity of the Promise.

Matrimonia Mixta states that the Catholic partner is gravely bound to make a sincere promise ("promissionem sinceram"). Most of the Directories have incorporated this phrase in the formulae and comments and have emphasized it. However, two Directories seem to attach additional importance to the sincerity in relation to the dispensation, thereby also imposing added responsibility on the priest. The Canadian Directory requires that,

The priest who prepares the couple for marriage will inform the Ordinary that these promises were sincerely made and that he is morally certain that the Catholic party will do his best to be faithful to his obligations.

The celebration of a mixed marriage cannot be authorized in those cases where it is clearly evident that the Catholic party is not sincere in making the promises [...] (norm 6).

Commenting on the promise, the Directory of the United States adds:

The promise of the Catholic must be sincerely made, and is to be presumed to be sincerely made. If, however, the priest has reason to doubt the sincerity of the promise made by the Catholic, he may not recommend the request for the dispensation and should submit the matter to the local Ordinary (norm 9).

In our analysis of the Motu Proprio, we suggested that, in view of the emphasis the document seems to place on the personal responsibility and obligation of the Catholic partner, his sincerity should be presumed.²⁰ It is true that the document makes explicit mention of sincerity. Nevertheless, from the general tone and spirit of Matrimonia Mixta, it would seem that the emphasis is not so much on the need for any "juridical sincerity" in relation to the dispensation as on the Catholic partner's over-all readiness to acknowledge and assume his obligations.

4. Manner of Informing the
non-Catholic Partner.

A wide variety appears in the means suggested for bringing the obligations of the Catholic to the attention of his partner. In some instances, the declaration and promise are to be made also in the presence of the non-Catholic; the French Directory prefers a "joint declaration of intention", when possible. Some Directories require the priest who

²⁰ P.J. Schierse offers the following comments regarding this matter: "The presumption of sincerity on the part of the Catholic in making the promise is a nuance which bespeaks a renewed personalistic approach and, therefore, to a certain extent is a change from the presumption of law evident in the 1918 Code which presumes institutions rather than persons", in "New Mixed Marriage Norms", p. 128.

prepares the couple for marriage to assume the task; others impose the obligation on the Catholic partner himself; yet others leave it to the responsibility of the priest to see to it in whatever way he thinks proper. A few Directories demand a written statement from the non-Catholic regarding his knowledge and awareness of the obligations of the Catholic partner. In all cases, the attestation of the priest is considered proof that the non-Catholic has been duly informed. In general, the Directories require the intimation to be made as soon as a marriage is contemplated, or at least during the preparation for it. Some point out that such a step would also enable the couple to reassess their association and contemplated marriage.

The Japanese Directory contains an additional provision in relation to this matter. In virtue of the Faculties granted to Japan in 1938,²¹ regarding the equivalent promises, the intimation to the non-Catholic could be omitted if it ~~cannot be done~~ or if it is inexpedient to do so. The parish priest is to note in the formula of the promises of the Catholic whether the non-Catholic has been informed of the obligations of his partner or the notification has been

²¹ See above p. 72.

omitted.²²

In contrast to this, the Directory of Peru requires the non-Catholic to be informed of more obligations of his Catholic partner than mentioned in the Motu Proprio. Accordingly, the non-Catholic is to be informed of the following obligations of his partner: to fulfil the religious duties of the Catholic Church; to see to the baptism and Catholic upbringing of the children; and not to present himself before a non-Catholic minister to give or renew the matrimonial consent.²³

5. The Non-Catholic and the Dispensation.

Matrimonia Mixta is silent as to what course of action should be taken if the non-Catholic opposes the

22 "Si notificatio de promissionibus partis catholicae parti acatholicae facienda, fieri non possit vel non expediat eam fieri, omitti potest, utendo facultate adhibendi cautiones aequipollentes an. 1938 Episcopis Japoniae concessa.

"Quare in Formula promissionum partis catholicae Parochus adnotet an certo constet de notificatione ad partem acatholicam vel an haec notificatio, adhibendo cautiones aequipollentes, omissa sit", Normae pro Matrimoniis mixtis, norm II, 2.

23 "También la parte acatólica debe ser de inmediato informada sobre las obligaciones que un cónyuge católico tiene, a saber: Cumplir con las obligaciones religiosas de la Iglesia católica, cuidar el Bautismo y educación de los hijos, y no presentarse para el efecto de pronunciar o renovar el consentimiento matrimonial ante un ministro acatólico", Disposiciones Vigentes, norm 7.

fulfilment of his partner's obligations, or if it is foreseen that the good intentions and earnest efforts of the Catholic partner would not bring about the desired goal. We suggested earlier that, in view of the general tone and spirit of the Motu Proprio, and in the light of the replies from the Sacred Congregation for the Doctrine of the Faith subsequent to Matrimonii Sacramentum, dispensations could be granted independent of the disposition of the non-Catholic and without moral certitude regarding the baptism and Catholic upbringing of the children.²⁴ Some Directories, however, have considered this situation differently.

The Directory of England and Wales views the situation thus:

Problems can indeed arise if the non-Catholic is determined to prevail upon the Catholic to abandon his faith, or is determined that the children (or some of them) shall be baptized and brought up outside the Catholic Church. This problem is acute when the non-Catholic adopts this attitude from conscientious conviction. [...] if the attitude of the non-Catholic remains so closed to the Catholic baptism and education of the children that it makes a non-sense of the Catholic's undertaking to do "all in his power", then the matter must be referred to the local Ordinary because the need to refuse the dispensation may well have risen (pp. 15-16).

In keeping with this statement, in the application for the dispensation, the priest is required to declare that,

²⁴ See above pp. 180-181.

In his opinion the non-Catholic will not oppose the Catholic's fulfilment of his declaration and promise in such a way as to make them meaningless (p. 19).

Also the New Zealand Directory seems to take a similar stand regarding this matter. It states:

[...] what is to be done if it appears that the non-Catholic is determined to prevail upon the Catholic to abandon the Catholic Faith, or is determined that some at least of the children shall be baptized and brought up outside the Catholic Church. This problem is acute when the non-Catholic adopts this attitude from conscientious conviction.

In such a situation it is not enough for the Bishop to know that the Catholic has declared his readiness to preserve his faith and has promised to do his best to ensure the Catholic baptism and upbringing of any children of the marriage. Information regarding the strength of faith and religious practice of the Catholic, together with an account of the outlook of the non-Catholic, will also be required before a decision can be made.

It is not desirable to attempt to legislate for every eventuality. The Bishop will give his pastoral consideration to the facts laid before him and will act according to his conscience in deciding whether or not to grant a dispensation.

By way of Norm, therefore, we agree that if, to the knowledge of the priest, the non-Catholic is opposed to the fulfilment of the Catholic's obligation, the full situation must be explained to the Ordinary when application for the dispensation is submitted. Though such cases are rare, they are nevertheless extremely difficult, and the dispensation may have to be deferred for further examination, or refused (pp. 18-19).

We cannot fail to note here that these statements are identical with those contained in the 1970 Directory of England

and Wales.²⁵

8 According to the Directory of Peru, the non-Catholic should be informed, as early as possible, of the obligations of his partner. The parish priest is required to enquire prudently of the non-Catholic's disposition and attitude regarding this matter. If he agrees to grant freedom to his Catholic partner to fulfil these obligations, he must give written evidence to that effect. If, on the contrary, he is unable to agree to these for reasons of conscience, the Ordinary will review the entire matter in individual cases to establish whether it is a simple objection to a formal promise, or a refusal to participate in the religious upbringing of the children, or a total and decisive exclusion to the extent that the children will be baptized and brought up in a non-Catholic confession. The Ordinary, after examining all the circumstances and taking into account the danger to the common good, will resolve the case conscientiously, as regards the impediment of ecclesiastical law, and without violating the divine law. At the same time, taking into consideration the desire of the couple and the public good, he will determine whether or not the matter

²⁵ See The Tablet, November 7, 1970, p. 1088.

should be handled with more or less reservation.²⁶

These provisions of the above three Directories seem to reflect the particular pastoral situations and problems in their regions and the bishops' attempt to deal with them. However, it could be pointed out that these provisions appear to restrict the openness and flexibility contained in the Motu Proprio; they also seem to ignore the emphasis it places on the individual and personal responsibility of the Catholic partner. Father J. Coventry seems to point out very clearly the danger involved in adopting such provisions:

26 "El párrocho, con la debida atención, preguntará a la parte acatólica qué piensa al respecto, y qué línea de conducta piensa seguir.

"Si la parte acatólica manifiesta que deja en libertad al futuro cónyuge católico para el cumplimiento de las obligaciones indicadas, se dejará constancia escrita de tal aceptación.

"Si la parte acatólica estima no poder aceptar por motivos de conciencia, el Ordinario hará un atento examen de todos los aspectos del caso particular: si se trata de una simple negación de promesa formal, o de participación en la educación religiosa de los hijos o de una exclusión total y decida de manera que los hijos sean bautizados y educados en el culto acatólico.

"El Ordinario, examinando las circunstancias y teniendo en cuenta el peligro de daño común, resolverá con criterio de conciencia, en cuanto el impedimento es de derecho eclesiástico y no lesiona el derecho divino. Al mismo tiempo, tomando en consideración la voluntad de las partes y el interés público, determinará, si la tramitación debe hacerse en forma más o menos reservada", Disposiciones Vigentes, norms 7-9.

If dispensations were granted only when the bishop thought there was at least strong probability that the conscientious position of the Catholic would in fact be complied with by the other Christian, the quite consistent theology of conscience of the M. P., would be challenged, and its most reconciling gesture would be withdrawn.²⁷

It could also be pointed out in this connection that the provision contained in the Conciliar Votum (1964), in Matrimonii Sacramentum (1966), and in the recommendations of 1967 Synod requiring the non-Catholic to have an attitude of "non-objection" and "non-exclusion" has not been incorporated in Matrimonia Mixta.²⁸

While these three Directories contain provisions which seem to restrict the openness, latitude and flexibility embodied in the Motu Proprio, the Directory of Togo contains a provision no longer required according to the legislation of Matrimonia Mixta. According to this Directory, whenever the non-Catholic partner is a Moslem or a Fetishist, he is required to promise to respect the faith of his Catholic partner and to grant him freedom to practise his religion. The parish priest or his delegate should obtain this promise in the course of the marriage preparation, and he should make

²⁷ J. Coventry, "Mixed Marriages", p. 734; see also G. and E. Marcheselli, Matrimoni Interconfessionali e Comunità Cristiana, p. 122.

²⁸ See above pp. 123-124, 136, 154.

note of it in the dossier, which should also include the signature of the non-Catholic.²⁹

This provision, regardless of its pastoral relevance and effectiveness, imposes upon the non-Catholic partner an obligation not required by the general law. It is true that Matrimonia Mixta leaves to Episcopal Conferences discretion "to lay down whatever other requirements may be opportune". Nevertheless, this concluding phrase of norm 7 seems to point more to the details regarding the provisions contained in norms 4 and 5, than to the competence to introduce additional conditions and requirements.³⁰

6. Declaration of Readiness.

The Motu Proprio requires the Catholic partner to declare his readiness to remove dangers of falling away from

29 "La Conférence épiscopale demande enfin que si la partie non catholique est musulmane ou féticheuse (nous ne disons pas animiste ou simplement païenne, mais féticheuse, c'est-à-dire initiée à un fétiche) on lui fasse prendre l'engagement de respecter la foi de son conjoint catholique et de lui laisser la liberté de pratiquer sa religion.

"Le curé ou le prêtre délégué fera prendre cet engagement lors de la préparation au mariage et le marquera sur la feuille d'interrogatoire que la partie non catholique signera", Dispositions communes de la Conférence Episcopale du Togo, p. 7.

30 See J. Coventry, "Mixed Marriages", pp. 733-734; U. Navarrete, "Commentarium Canonicum de Litt. Ap. Motu Proprio datas 'Matrimonia Mixta'", p. 440; J. Tomko, "De Literis Ap. 'Matrimonia Mixta'", p. 186.

the faith (norm 4). The document itself, in its introductory part, provides sufficient comments on the nature of this obligation. Of the Directories we examined, the Australian Directory alone contains a detailed discussion of the overall faith dimension of the Catholic in relation to his life in general and his marriage to a non-Catholic in particular. Comments made in other Directories are derived substantially from the introductory part of Matrimonia Mixta.

The Directories of Australia, England and Wales, and New Zealand refer explicitly to the divine law as the source of the Catholic's obligation and point to its absolute character. The Directory of England and Wales seems to add also an ecclesiological dimension in the interpretation of this source. It points to the role of the Church in helping the faithful to acknowledge the divine law obligation according to the various situations. Commenting on the obligation of the Catholic to safeguard his faith, the Directory states:

This is divine law, and it is absolute. The Church could never make it right for a Catholic to enter into a marriage which he or she knew would constitute a proximate danger of losing the faith.

On the other hand, decisions as to when and in what form people are to acknowledge that this divine law applies to them rest with the Church (p. 10).

The Directory of Thailand³¹ does not seem to take into account the degree of distinction made in Matrimonia Mixta concerning the obligations of the Catholic toward his own faith and toward the religious upbringing of the children. His duty to preserve and safeguard his faith is described in conditional terms as his obligation toward his children. In order to obtain a dispensation, the Catholic partner is required to sign the following statements:

1. I solemnly promise to do all in my power to remove the danger of my falling away from the Catholic faith.

2. I solemnly promise to do all in my power according to circumstances to have all the children born of this marriage baptized and brought up in the Catholic Faith [p. 37].

One could probably argue that a distinction is contained in these statements, as the first says "all in my power" and the second, "all in my power according to circumstances". What we should like to emphasize here is the fact that the Motu Proprio uses the phrases, "quantum fieri potest" and "omnia pro viribus", only in relation to the Catholic's duty toward the religious upbringing of the children, and not toward his own faith.

³¹ Promulgation of the Episcopal Conference of Thailand Concerning the Apostolic Letter of Pope Paul VI issued "Motu Proprio" determining Norms for Mixed Marriages, [no date].

With this general introduction to the Episcopal Directories in their application of Matrimonia Mixta, we shall now examine how they have interpreted the meaning and extent of the sincere promise of the Catholic partner.

CHAPTER X

EPISCOPAL DIRECTORIES II: THE SINCERE PROMISE TO DO ONE'S BEST

The diversified treatment, by the various Directories, of the sincere promise required of the Catholic partner is the most relevant for our study. The principles which need to be taken into consideration in the interpretation and application of the provision regarding the promise seem to be these: the Catholic partner, by divine law, has the obligation to share with his children the faith he holds to be true; the non-Catholic, too, would have a similar obligation; the conscientious convictions of both need to be respected; both have a natural right to marry, to have children, and to determine the kind of religious upbringing the children should have; both parents are equally responsible for the religious upbringing of the children. We shall now examine how the various Directories have interpreted and applied these principles in their implementation of the general law governing the promise. We shall study them under three major aspects: obligation deriving from the divine law, obligation deriving from one's faith, and the obligation and promise of the Catholic partner versus the common responsibility of the couple.

1. Obligation Deriving from the Divine Law.

The Directories of Australia, England and Wales, Ireland, and New Zealand stress that the obligation of the Catholic partner is imposed by divine law binding him all his life, from which nobody can dispense. Nevertheless, the manner in which these Directories seem to perceive the same obligation allows for different degrees. Thus, for example, the Australian Pastoral Guidelines¹ state:

The obligation to ensure the Catholic baptism and upbringing of the children is also of divine law, but it is not absolute. It must be considered in conjunction with two other rights, namely, the Catholic's natural right to marry, and the shared rights of both parents concerning the baptism and upbringing of the children.

Because of the several rights involved the Catholic cannot do more than promise that he will "do all in his power to have all the children baptized and brought up in the Catholic Church". This promise imposes a serious obligation; it must be made sincerely and will continue to bind throughout the marriage (numbers 11 & 12).

The Directory of England and Wales stresses several times the nature of the divine law obligation:

¹ Pastoral Statement on Mixed Marriages, Australian Episcopal Conference, August 24, 1977; Mixed Marriages. Pastoral Guidelines for Priests, A Supplement to "Pastoral Statement on Mixed Marriages", Australian Episcopal Conference, August 24, 1977.

The fact remains that the obligation is of divine law. It is an implication of the fact perceived by Catholic faith that the Catholic Church is central to the plan of salvation instituted by Christ. It is beyond the Church's power ever to dispense a Catholic from the obligation to see that as far as possible the children will be baptized and brought up in the Catholic faith.

What is of Church law, and therefore able to be modified or dispensed by Church authority, is the manner in which the Catholic must formally undertake to fulfil this already existing obligation (pp. 10-11).

Again, commenting on norm 4, it adds:

It is important to realize that these obligations do not arise from the declaration and promise requested by this norm. The obligation is already there from the law of God. The Church, because of her pastoral responsibility, requires the declaration and promise to ensure that each individual Catholic acknowledges the obligation, before the Church approves of his or her entering a mixed marriage (pp. 14-15).

The Statement by the Irish hierarchy seems to emphasize mostly the seriousness of the divine law obligation:

There are, however, religious principles at stake which neither Pope nor Bishops can change. This is why the regulations emphasize that the Catholic party at a mixed marriage must do all in his power to ensure the Catholic baptism and upbringing of all the children of the marriage. At the Synod of 1967 the Bishops were emphatic that this was a principle of divine law.

A Catholic can never be dispensed from the duty of handing on to his children the faith that is in him. Nor can he be authorized to withhold from his children the full riches of Catholic devotional and sacramental life. The

Church's position in this matter flows from the very nature of Catholic faith.²

In its introduction, the New Zealand Directory points out that,

The Church has always discouraged mixed marriages and continues to do so. She is prepared to make appropriate provisions for them when due safeguards of conscience are established [...].

The safeguards concern principles which derive from Divine Law (p. 13).

Part of its commentary on norm 4 is the same as that in the 1970 Directory of England and Wales, which reappears with very little alteration in the revised (1977) Directory from which we cited earlier. We shall cite here only the other parts of that commentary from the New Zealand Directory:

The obligation of the Catholic party springs from Divine, not Ecclesiastical Law. [...]

While in practice much has always depended on the Catholic's fidelity to his or her promise in this regard, the onus of fulfilling the obligation now falls squarely and completely on the conscience of the Catholic (pp. 16-17).

These two Directories also suggest that divine law obliges a Catholic to choose a partner, if possible, who would not oppose the fulfilment of his obligations. Thus, the Directory of England and Wales states:

² Statement by the Irish hierarchy, October 1970, in The Furrow, 21(1970), p. 733.

We should like to emphasize that it would be a pity if young people were to imagine these principles of divine law apply only after marriage. They lay an obligation in conscience upon a Catholic to choose, whenever possible, a partner who will not be opposed to the fulfilment of these obligations (p. 11).

It could be noted here that this particular extension of the divine law obligation was not mentioned in the 1970 Directory.

The New Zealand Directory states that,

Young people should be taught that these principles of Divine Law apply not only after marriage, but put an obligation in conscience on a Catholic to choose, whenever possible, a partner who will not be opposed to the fulfilment of these obligations. The Catholic's choice of a partner should include a judgement on his ability to fulfil, in company with his partner, his obligations from Divine Law (pp. 13-14).

Without mentioning explicitly divine law, the Canadian and Swiss Directories point out that nobody can dispense the Catholic partner from his obligation in conscience, and that this obligation remains throughout his life.

2. Obligation Deriving from the Faith.

It is significant to note that some Directories have considered the obligation of the Catholic partner also in relation to his faith in general and his faith in the Catholic Church, thereby also adding an ecclesiological dimension to the obligation. The Australian Directory places the obligations of the Catholic partner within his over-all faith-commitment. Accordingly, it states:

Thus the promise of the Catholic to live his own faith and to do all in his power to share it with his children is simply a declaration that the person is a Catholic and that he takes his faith seriously.

Marriage in church is no mere civil affair. It is also a public declaration of faith, before the entire Christian community, by at least one of the persons standing before the altar. The couple cannot honestly stand there if neither has that faith. [...]

Before deciding whether or not to ask for marriage in the Catholic Church, the Catholic should consider seriously why he wants to be married in the Catholic Church - whether it is because of his own faith. [...]

He should ask himself whether he believes in God and considers God important in his life; whether he believes in Christ and wants to receive His help in the marriage; whether he considers the blessing of the Church important at his wedding; whether he sees his marriage as something sacred.

In requesting to be married in the Church, he is answering yes to all of these questions.

If he can say yes to these questions, then the promise to live his faith and to do all that he is able to do to share this faith with his children is part of that yes. The only requirement is that this promise be a serious and sincere one. If it is truly serious and sincere, then, while the obligation is a lasting one, the law laid down by Pope Paul has already been fulfilled (pp. 13-16).

According to the Austrian Directory, the Catholic partner is to be presented with the following declaration during the pre-nuptial instruction:

In my marriage, I will remain steadfast in my Catholic faith. I recognize that my faith requires of me ("Ich erkenne an, das mein Glaube von mir verlangt") that I see to the baptism and upbringing of our children in the Catholic faith [...].³

As an explanation to this declaration, the Directory adds:

Every person has the obligation, according to his abilities, to hold to what he considers to be true and good. Hence, the Catholic, acknowledging the Catholic Church as founded by Christ and containing the 'fullness of grace and means of salvation' (Const. on the Church, n. 8), has the obligation in conscience to remain a member of this Church and bear witness to it (Const. on the Church, nn. 8 & 14).⁴

Again, commenting on the Catholic's obligation regarding the upbringing of the children, the document states:

The Catholic is obliged to do all in his power ("alles ihm möglich zu tun") to pass on to his children the faith he holds to be true and also the membership in his Church.⁵

The Directory of England and Wales refers to the obligation of the Catholic "as an implication of the fact perceived by Catholic faith that the Catholic Church is central to the plan of salvation instituted by Christ" (p. 10).

³ Ausführungsbestimmungen der Österreichischen Bischofskonferenz zum Motuproprio "Matrimonia Mixta" vom 31. März 1970 mit praktischen Erläuterungen, 1970, in Österreichisches Archiv für kirchenrecht, 21(1970), p. 349.

⁴ Ibidem, p. 350.

⁵ Ibidem.

The French Directory points out that it is in the name of his faith ("Le catholique reconnaîtra qu'au nom de sa foi") that the Catholic partner will acknowledge his grave obligation in conscience to do everything possible ("tout ce qui dépend de lui") to see that his children receive baptism and upbringing in the Catholic Church and also that they participate in the devotional and sacramental life of the Catholic Church.⁶

Likewise, the German Directory also states that the Catholic, because of his love for his faith ("aus Liebe zu sinem katholischen Glauben gedrängt"), is obliged not only to live that faith fully in his marriage, but also to share it with his family and pass it on to his children.⁷ It further explains the obligations of the Catholic in relation to his faith. These explanations, however, are the same as

⁶ Les Mariages Mixtes. Nouvelles dispositions pour les diocèses de France, approuvées par l'Assemblée plénière de l'Episcopat français (Lourdes, octobre 1970), in DC, 67(1970), p. 1124. Portions of this document are available in English translation, in [Anonymous], "Matrimonia Mixta: Some Episcopal Directories", pp. 216-233.

⁷ Auführungsbestimmungen der katholischen Deutschen Bischofskonferenz über die rechtliche Ordnung konfessionsverschiedener Ehen (23. September 1970), in F. Reinhard, "Mischehe" - Aber Wie? (1971), p. 58. A French translation of the Directory is available in DC, 67(1970), pp. 1033-1040; portions of the document are available in English translation, in [Anonymous], "Matrimonia Mixta: Some Episcopal Directories", pp. 216-233.

in the Austrian Directory from which we cited above.

The aspects of the faith and of the ecclesial dimensions are clearly brought out in the following Text of Promise in the New Zealand Pastoral Guide:

Since I believe that Christ entrusted the fullness of grace and truth to the Catholic Church governed by the successor of Peter and the bishops in union with him, I promise to do all in my power to have our children baptized and brought up in the Catholic faith [p. 5].

A detailed treatment of this relationship between the Catholic's obligations, his faith, and the ecclesiological considerations is found in the Directory of the United States. Commenting on the joint responsibility of the couple for the religious upbringing of the children, it states:

In this the Catholic partner is seriously bound to act in accord with his faith which recognizes that, "This is the unique Church of Christ which in the Creed we avow as one, holy, catholic, and apostolic. [...] These elements, however, as gifts properly belonging to the Church of Christ, possess an inner dynamism toward Catholic unity". (Const. on the Church, n. 8) This faith is the source of a serious obligation in conscience on the part of the Catholic, whose conscience in this regard must be respected (p. 5).

3. The Obligation and Promise of the Catholic Partner versus the Common Responsibility of the Couple.

Matrimonia Mixta acknowledges explicitly the difficulties involved in the religious upbringing of the children of mixed marriages, and, at the same time, insists on the

duties and responsibilities common to both parents in this regard:

The problem of the children's upbringing 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. However, the Church endeavours to face this problem, just as it does the others, by its legislation and pastoral care.⁸

We now intend to study how the various Directories have endeavoured to face this problem, particularly in view of the obligation and promise of the Catholic partner.

The Motu Proprio uses two expressions to qualify the obligation of the Catholic partner regarding the baptism and the upbringing of the children in the Catholic faith: the "quantum fieri potest" of the introductory part, and the "omnia pro viribus" of norm 4. These phrases have been rendered differently by the various Directories. The Canadian Directory alone adopts the expression, to do one's utmost, which seems to be a more exacting one than either of the Latin texts. Most of the Directories have incorporated one or the other phrase rendering it as: as far as possible,

⁸ "Ad liberos autem quod spectat educandos, cum ambo coniuges hoc munere obstringantur illudque, una cum omnibus conexis obligationibus, ipsis minime fas sit ignorare, res difficultate non caret: cui tamen, quemadmodum ceteris, Ecclesia legibus suis et cura pastoralis occurrere studet", Matrimonia Mixta, p. 259.

to do what is possible, as far as in him lies, to do one's best, to do everything possible, and to do all in one's power. These expressions seem to have become crucial in the understanding and interpretations of what the Catholic partner is actually required to do in the concrete circumstances of his marriage.

The Australian Directory, taking into account the various aspects of the Catholic's obligation, offers the following comments:

While the sharing of faith with one's children is most important, so too is the unity of the family, and we recognize that there can be conflicts between the two. [...]

The religious upbringing of the children always and in all cases remains the responsibility of both parents. Consequently, in prayer before God, a couple should try to make joint decisions about their children's upbringing, decisions in the fulfilment of which they can both share. Both should remember that to do all in one's power does not mean a stark alternative of all or nothing (p. 16).

The Directory also encourages the couple to discuss the matter seriously well in advance and even ask themselves whether they should renounce the plan of the marriage because of irreconcilable religious convictions:

The fact that the non-Catholic now makes no promise before the priest is all the more reason for the couple to discuss the matter themselves. Avoiding discussion is only postponing the problem to a time when it can be far more destructive. [...]

Nor should we forget that although the non-Catholic makes no promise before the priest, he too is of course bound by the divine law (pp. 17-18).

These points are further elaborated in the Pastoral Guidelines, where we read:

The rights and obligations of the partner who is not a Catholic towards his own conscience in the matter of the baptism and upbringing of the children must be fully respected. They remain intact, subject of course to God's law.
[...]

A couple who cannot reach an agreement about the baptism and upbringing of the children which is acceptable to their respective consciences must seriously consider the advisability of marrying. Such a basic conflict seems to present a very serious obstacle to the future peace and harmony of the marriage.

However, because of a person's natural right to marry and because of the limits to the opportunity to marry, pastors must not assume too readily that a marriage is automatically excluded even in a case where there seems little possibility of the Catholic baptism and upbringing of the children. Each case must be carefully examined and the local Ordinary consulted.

Neither divine nor ecclesiastical law demands moral certainty that the promise "to do all in one's power" to have the children baptized and brought up as Catholics will be successfully implemented (numbers 9, 13-15).

The Austrian Directory requires the Catholic to state that he will respect the conscience of his partner. After describing the obligation incumbent on the Catholic, the Directory adds:

Since the upbringing of the children is always the task of both parents and since one must not force either of them to act against his conscience, this obligation means doing all that is possible in the concrete situation, acting in the way which seems best in conscience ("besteht diese Verpflichtung darin, das in der konkreten Situation nach bestem Wissen und Gewissen mögliche zu tun").⁹

In view of this interpretation, the Directory also admits that, regardless of his promise and earnest efforts, the Catholic partner may face situations in which he will have to permit the upbringing of the children in a non-Catholic Church. Even in this case, the Directory adds, he is still bound by his obligation and promise, which will assume a different meaning:

In this case, he should not be unconcerned about the children's religious upbringing, because the authentic religious life of both parents is necessary for it.

When the children are baptized and being brought up in a non-Catholic Church, the promise made by the Catholic means:

that he intends to play an active part in the Christian life of the marriage and of his family;

that he will encourage the religious upbringing of the children;

that, by his exemplary life, he will draw the children to the Catholic faith;

⁹ Ausführungsbestimmungen der Österreichischen Bischofskonferenz, p. 350.

that he will deepen his faith in continuing to study it, so as to have a fruitful dialogue with his partner on matters of faith and to be able to answer the questions of his children;

that he will pray, together with his family, especially in asking the grace of unity, as Our Lord willed it, "that all may be one".¹⁰

The Belgian Directory insists very strongly on the joint responsibility of the couple for the religious upbringing of the children. It encourages them to discuss between themselves well in advance their obligations to remain loyal to their respective faiths, and particularly their responsibility for the children's religious upbringing. In the course of the marriage preparation, the priest is required to remind the Catholic partner of his obligations. He will, then, promise to fulfil these obligations; he will also promise to take into account the obligation of his partner to remain loyal to his faith and the responsibilities which it entails.

The Belgian Directory also admits the possibility of the non-Catholic upbringing of the children, since both parents are responsible for their religious upbringing. Hence, it explains what the promise of the Catholic would mean in such situations:

¹⁰ Ausführungsbestimmungen der Österreichischen Bischofskonferenz, p. 350.

Thus it can happen that at the end of a serious discussion the couple may decide, after asking advice, that the children will be baptized and brought up in the faith of the non-Catholic partner.

Even in this case, the Catholic partner will be bound by his commitment to remain firm in his faith, and he must be in his home a faithful witness to a fervent Christian life in the Catholic Church. His witness can be expressed in a life in which a sense of prayer and service are held in honour. Thus he will contribute to the growth of the Christian life of the family. While respecting the convictions of his partner and his children, he will endeavour to make known the Catholic Church and to encourage an openness to its life of faith.¹¹

The Canadian Directory stresses many times the common responsibility of the couple regarding the religious upbringing of the children. The Catholic is required to promise to respect the faith-commitment of his partner; and he is asked to make his promise only after serious discussion with his partner. The Directory also encourages the couple to renounce the plan of their marriage, if their religious convictions would not allow them to make a mutually acceptable decision on this matter:

¹¹ Note pastorale concernant le mariage d'un catholique avec un baptisé d'une autre confession chrétienne, 12 octobre 1970, in DC, 67(1970), p. 1133. Portions of this document are available in English translation, in [Anonymous], "Matrimonia Mixta: Some Episcopal Directories", pp. 216-233.

The Catholic party, after having discussed the matter with the other party, will promise to do his utmost to see that children to be born of the marriage receive Catholic baptism and education, while respecting the religious convictions of the non-Catholic partner and without placing their conjugal life in jeopardy.

"To do one's utmost" in the particular circumstances of this marriage means that the parties should arrive at a decision agreeable to both, after sincere discussions which take place with due respect for the religious convictions of the partner. No one can dispense the Catholic party from his obligation in conscience which lasts for life. Whenever the religious convictions of one side or the other are irreconcilable, serious consideration should be given to abandoning their plan of marriage (norms 4 & 5).

The Directory of England and Wales recommends that, before the marriage, the couple arrive at a decision on the religious upbringing of the children. At the same time, it insists that the Church cannot remain neutral or passive in this matter, as though the couple have the exclusive right in this area:

We strongly advise that a couple contemplating marriage should agree before the wedding about the baptism and education of any children they may have, and the priest should encourage them to do so. This however should not be used as a means of requiring of the non-Catholic an assurance which the new law does not require of him. As we have noted earlier, the Church has great concern for the future of the children of all marriages which she is asked to sanction. To relegate her to a neutral or passive role, as though parents have exclusive rights in this area, is unjust to her position. Rights are founded on duties and the Church has her own duty to Christ wherever she

is asked to authorize a marriage in His name. It would be a grave error to suppose that the Church has abdicated her responsibility here (p. 15).

This active concern of the Church is again stressed in relation to the common responsibility of the parents. This responsibility is explained in rather cautious terms. The non-Catholic's duty seems to be recognized as respecting the "right of the person", and not the "error" he is presumed to be in. The Church's concern is described in view of the ecclesial dimension of the Sacrament of Marriage:

In a mixed marriage the children are children not only of the Catholic but also the children of the partner who does not share the Catholic faith. Error may have no rights; people do, and we must respect the rights of others. Hence the Holy Father's precise statement of the divine law that "the Catholic ... is obliged ... as far as possible to see to it that the children are baptized and brought up in ... [the] Catholic Church". [...]

We wish to insist that for all our reverence for the parental rights of a non-Catholic married to a Catholic, we do regard the Catholic baptism and education of the children of a Catholic as a matter of great concern. We are conscious that the intrinsic purpose of a Sacrament is here in question. In its new dignity matrimony "applies to Christ and the Church" (Eph. 5, 32). Within this profound context the Church sees this sacrament as destined for her renewal and growth. The Catholic Church therefore cannot be indifferent about the decision of the spouses concerning the baptism and education of their children. [...]

We fully recognize that respect must be paid to the parental rights of the non-Catholic, as to those of the Catholic whose conscience must have regard to the teaching of the Church (pp. 10-11).

Commenting on the Catholic's promise, the Directory states:

We must obviously insist again that the promise concerning the children must be sincere. But the point that needs to be emphasized now is that the content of the promise has changed from what was required before this Motu Proprio. It is now a sincere and deliberate undertaking to "do all in one's power", that is to say, "all one can do in the actual circumstances of the marriage", "without jeopardising the marriage", "within the unity of the marriage". For the reasons we spoke of in commenting on (1) the legal requirement now stops short of the assertion that the Catholic baptism and education of the children will be achieved (p. 15).

It could be pointed out here that this interpretation of the promise was not contained in the 1970 Directory. The 1970 Directory also did not admit the possibility of the children's baptism and upbringing in a non-Catholic Church. The revised Directory admits such a possibility and explains what the promise of the Catholic would mean in those cases. This explanation is identical to that found in the Austrian Directory, except in the formulation of number 2, which alone we shall cite here:

Where the children, despite all the Catholic's efforts, are baptised and being educated in the faith of his partner, the promise made by the Catholic still has meaning. It demands [...]:
(ii) that he will do all he can in the actual circumstances of his marriage to draw the children to the Catholic faith: [...] (pp. 16-17).

The French Directory contains the following statement on the joint responsibility of the parents and also on the meaning of the Catholic's promise:

The serious decision on the principle of baptism and, where it is the case, the choice of a particular Church or community for the child, should be taken jointly, in mutual respect for conscience.

It is possible that this profound reflection may end in the impossibility of reconciling mutual respect for objectively informed consciences either as far as the profession of faith is concerned, or in what concerns the baptism and upbringing of the children, and will lead one or other of the partners to renounce freely the proposed marriage.

Apart from this case, the realization of the promise required of the Catholic may sometimes endanger the essential good of his marriage, especially the unity of the couple and the peace and harmony of the home.

However serious the obligation which always remains ("si grave qu'en soit l'obligation qui subsiste toujours"), it can be admitted that the execution of the promise should not be urged in this situation, while explaining that doing "all in one's power" ("faire tout ce qui dépend de lui") is not for the Catholic partner a simple alternative of all or nothing.¹²

The meaning of "to do all in one's power" is further illustrated in one of the proposed joint declarations for the couple, which reads as follows:

We know that the promise required from one of us who is a Catholic "to do all in his power for the baptism and upbringing of his children in the Catholic faith" has to be carried out in the concrete circumstances of our home. This means that, in mutual respect for each other's

¹² Les Mariages Mixtes. Nouvelles dispositions,
p. 1124.

reasons and religious convictions, we shall together make a decision which we can both approve in conscience.¹³

According to the German Directory, the parish priest is required to ask the Catholic partner the following questions:

Are you aware that as a Catholic you have the obligation ("Sind Sie sich bewusst, das als katholischer Christ die Pflicht haben") to baptize your children in the Catholic Church and bring them up in the Catholic faith? Do you promise to fulfil this moral obligation so far as is possible in your marriage ("soweit das in Ihrer Ehe möglich ist")?¹⁴

The explanations of the meaning of this promise, the joint responsibility of the parents, and also the significance of the Catholic's promise when the children are being brought up in a non-Catholic Church are the same as those in the Austrian Directory we quoted earlier.

The German Directory also adds that one cannot make general rules for the religious upbringing of the children which apply to all cases. Preferably it should be decided before the marriage whether the children are to be baptized and brought up in the Catholic Church or not. But a dispensation should not be refused on the ground that this point is

¹³ Les Mariages Mixtes. Nouvelles dispositions,
p. 1131.

¹⁴ Auführungsbestimmungen der katholischen Deutschen Bischofskonferenz, pp. 60-61.

not clarified. The Directory also rules that the children should be baptized as infants; interconfessional or dual confessional upbringing is not advisable as it encourages indifferentism.¹⁵

The Statement by the Dutch hierarchy was made jointly by the Dutch Reformed Churches and the Dutch Lutheran Church. It requires no promise or commitment, in whatever form, from the Catholic partner, but leaves the decision and responsibility regarding the baptism and upbringing of the children entirely to the couple:

The choice of the church-community in which parents present their children for baptism is their own responsibility. All sorts of circumstances may influence this choice, but in any case the future education of the children must be taken into account. [...]

Interchurch couples need to study seriously together when coming to a decision as to how they will educate their children. They must both have a positive attitude towards this and the intention of educating them in the spirit of the Gospel of Jesus Christ in conformity with the promise they made at baptism. It is desirable that they are oriented towards one Church.¹⁶

The Directory of Switzerland contains statements which seem to take into account every aspect of the Catholic's promise:

¹⁵ Auführungsbestimmungen der katholischen Deutschen Bischofskonferenz, p. 62.

¹⁶ A Joint Declaration, p. 96.

The Catholic partner is obliged in conscience to remain united with his Church, which he believes to be founded by Christ. But his partner also has to be loyal to the faith he recognizes as true.

The Catholic, after dialogue with his partner, promises to do what is possible to ensure ("promet de faire son possible pour assurer") the Catholic baptism and upbringing of the children, while respecting the religious convictions of his non-Catholic partner and without endangering the harmony of the marriage ("sans mettre en danger la communauté conjugale").

We rejoice to see that a common Christian faith makes possible a common Christian upbringing. It is, therefore, necessary, in the first place, that the couple would want to bring up their children as Christians.

But Christian upbringing requires baptism and membership of the Church. Because there is no Christian upbringing without membership of a Church, the partners to a mixed marriage have a difficult decision to make.

The religious upbringing of the children is a duty shared by both partners. That is why the Catholic partner cannot alone commit himself to baptize and bring up his children effectively in the Catholic faith ("C'est pourquoi la partie catholique ne peut prendre, à elle seule, l'engagement de faire baptiser et d'éduquer effectivement ses enfants dans sa foi catholique"). He must, however, desire to work toward the Catholic baptism and upbringing of his children as far as that is possible in the concrete circumstances of his marriage ("pour autant que ce soit possible dans les circonstances concrètes de son mariage").

To do his best ("Faire son possible") in the concrete circumstances means: in sincere dialogue and in respect for the reasons and religious convictions of the partner, to make a decision which both can approve. Nobody can dispense the Catholic partner from this obligation

of conscience which, after the celebration of the marriage, remains throughout his life ("Personne ne peut dispenser le conjoint catholique de cette obligation de conscience qui, après la célébration du mariage, demeure pour toute la vie"). When on the two sides the religious convictions cannot be reconciled, it will be necessary to renounce the proposed marriage.¹⁷

We should like to point out here that norm 5 of the Canadian Directory bears a very close resemblance to this last paragraph.

Among the pastoral directives contained in the Directory of Tchad, we find the following interpretation of the promise of the Catholic:

Paragraph 3 regarding the formulation of the promises states the duty of the future Catholic spouse to commit himself to do all he is able to ("à faire tout ce qu'il peut") for the baptism and Catholic upbringing of the children.

We believe that if the father is Catholic this will not ordinarily cause any difficulty in Tchad, because generally in Africa children follow the religion of the father. Difficulties, however, can exist in the contrary case, and this fact needs to be taken into account.

In any case, the serious decision on the principle of baptism and, where it is the case, the choice of a particular Church or community for the child should be taken jointly, in mutual respect for conscience. [This statement is identical with that found in the French Directory].

¹⁷ Directives des Evêques Suisses, 16 septembre 1970, in DC, 67(1970), p. 1032. Portions of this document are available in English translation, in [Anonymous], "Matrimonia Mixta: Some Episcopal Directories", pp. 216-233.

One cannot exclude the case in which the conscience of the future non-Catholic spouse would not allow him to agree immediately to the baptism and Catholic upbringing of the children. In that case, one should let things develop gradually and ask the parents to pursue their reflections together to do their best for the Christian formation of their child.

In most cases it will be possible for the couple to come to a common decision at the time of their engagement and during their preparation for marriage. In other cases, they will decide to pursue together their goal also after their marriage, allowing themselves to be guided by their mutual love and sincere fidelity to their Christian faith.¹⁸

18 "Le paragraphe 3 relatif à la formulation des Promesses fait un devoir au futur époux catholique de s'engager à faire tout ce qu'il peut pour que ses enfants nés ou à naître soient baptisés et élevés dans la Foi catholique.

"Nous pensons que si le père est catholique ce point ne fera ordinairement pas au TCHAD de difficulté, car généralement en Afrique, les enfants suivent la religion de leur père. Des difficultés pourront exister dans le cas inverse. Il faudra en tenir compte. De toute manière, la grave décision concernant le principe du baptême, et quand il y a lieu, du choix pour l'enfant d'une Eglise ou communauté déterminée, doit être prise en commun dans le respect mutuel des consciences. On ne peut exclure le cas où la conscience du futur époux non catholique ne se sentirait pas le droit d'accorder tout de suite le baptême et l'éducation catholique de l'enfant. Dans ce cas, on laissera mûrir les choses et l'on demandera aux parents de poursuivre leur réflexion en commun, et de travailler de leur mieux et ensemble, à la formation chrétienne de leur enfant. Il sera possible en beaucoup de cas aux futurs époux de fixer leurs intentions communes au moment des fiançailles et de la préparation au mariage. En d'autres cas, ils pourront décider de poursuivre ensemble leur recherche même après le mariage, se laissant guider par leur amour mutuel et un désir sincère de fidélité à leur Foi chrétienne", Document d'applications du Motu Proprio sur les Mariages Mixtes, [no date], p. 6.

Taking into account the possible limitations of what the Catholic partner might be able to do in the concrete circumstances, the Directory of Togo gives the following interpretation of his promise:

The Catholic partner must promise to do his best ("elle doit promettre de faire tout son possible").

What is possible, however, is a question of moral assessment ("Ce possible est une question d'appréciation morale") according to the circumstances of the person, family environment, and time.

If the situation is favourable, especially if the non-Catholic partner consents to the baptism of the children, it is quite evident that the Catholic is obliged to have them baptized immediately in the Catholic faith.

If, on the other hand, the non-Catholic agrees to the baptism, but excludes the Catholic upbringing, then the Catholic partner will not have them baptized. In this case, to do his best ("faire tout son possible") will consist in the following:

He will prudently and progressively initiate the children, from their very early age, to the Christian faith; and, when they become of age, he will, if possible, enter them in a Catholic school where they will be educated in a religious environment; and, above all, he will give them examples of his faith and Christian life in such a way that the children, as they grow up, will desire to follow his examples.

Hence, dispensations may be granted, even if it is foreseen that the Catholic partner

will not be able to do more than what is mentioned in the previous paragraph.¹⁹

The Directory of the United States stresses the rights and common responsibilities of the parents, the need to come to a joint decision without violating the conscientious convictions of one another, and also the source of the Catholic partner's obligation:

[...] parents have the right and responsibility to provide for the religious education of their children. This right is clearly taught by Vatican II: "Since the family is a society in its own original right, it has the right,

19 "Quant à la partie catholique:

"Il lui est demandé: 'elle doit promettre de faire tout son possible'. Ce possible est une question d'appréciation morale selon les circonstances de personnes, de milieu familial et de temps aussi.

"Si la situation est favorable, surtout si la partie non catholique accepte que les enfants soient baptisés; il est bien évident que la partie catholique a le devoir de leur faire donner le baptême sans attendre et de les faire éduquer dans la foi catholique.

"Si la partie non catholique accepte le baptême de ses enfants mais exclut leur éducation catholique, la partie catholique ne devra pas les faire baptiser et 'faire tout son possible' consistera en ce qui va être dit:

"Le 'faire tout son possible' demandera à la partie catholique de former dès le plus jeune âge l'âme de ses enfants, dans la mesure où la prudence le lui permettra de les initier progressivement dans la foi chrétienne, à l'âge scolaire de les faire entrer si possible dans une école catholique où ils seront éduqués dans une ambiance religieuse, et surtout de leur donner l'exemple de sa foi et de sa vie chrétienne, afin que ses enfants désirent, en devenant grands, suivre son exemple.

"On peut donc donner la dispense même si l'on sait que la partie catholique ne pourra pas faire davantage que ce qui vient d'être dit au paragraphe précédent", Dispositions communes de la Conférence Episcopale du Togo, p. 5.

freely to live its own domestic religious life under the guidance of the parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive". (Declaration on Religious Freedom, n. 5)

It is evident that in preparing for a mixed marriage, the couple will have to reach decisions and make specific choices in order to fulfil successfully the responsibility that is theirs toward their children in this respect. It is to be hoped for their own sake that in this matter, the couple may reach a common mind. [...] If this issue cannot be resolved, there is a serious question whether the couple should marry.

In reaching a concrete decision concerning the baptism and religious education of children, both partners should remember that neither thereby abdicates the fundamental responsibility of parents to see that their children are instilled with deep and abiding religious values.

In this the Catholic partner is seriously bound to act according to his faith [...] This faith is the source of a serious obligation in conscience on the part of the Catholic, whose conscience in this regard must be respected (pp. 4-5).

The meaning and also the limitations of the Catholic's promise are explained in the Directory of Zaire in the following manner:

If it should happen that the promise of baptism and the upbringing of the children in the Catholic faith risks causing tension between the two Churches or the two families and jeopardises the harmony and peace in the home, then the Catholic partner will promise to do his best ("de faire tout son possible") for the children to have a Christian upbringing.

Baptism will be postponed until such time when the children themselves can choose it. Meanwhile, the Catholic partner will do his best ("tout son possible") so that the children will freely choose the Catholic Church.²⁰

* * * * *

In retrospect, the admission by Matrimonia Mixta that a uniform canonical discipline on mixed marriages is not possible, but that it must be adapted to the various circumstances and situations, appears to be vindicated through the Episcopal Directories. They illustrate very clearly that difficulties related to mixed marriages vary from place to place. Accordingly, we find considerable differences in the interpretation and application of the general legislation; the particular pastoral situations in a territory seem to account for what appears to be a stricter or broader interpretation. Some have emphasized the pastoral aspect of

20 "S'il s'avère que la promesse de faire baptiser et éduquer les enfants dans l'Eglise catholique risque d'engendrer des conflits entre les deux Eglises ou les deux familles et de compromettre l'entente et le bonheur dans le foyer, la partie catholique promettra de faire tout son possible pour que les enfants reçoivent une éducation chrétienne.

"Le baptême sera retardé jusqu'à l'âge où les enfants pourront le choisir eux-mêmes. La partie catholique fera cependant tout son possible pour que les enfants choisissent librement l'Eglise catholique", Décision de la Conférence Episcopale Nationale du CONGO concernant les numéros 7-9 et 10 du MOTU PROPRIO "Matrimonia Mixta" du 31 mars 1970, 23 octobre 1970, directive 12.

the legislation, others its juridical aspect, yet others its ecumenical aspect. Some have emphasized the divine law aspect of the Catholic's obligation for the religious upbringing of the children to the extent of ignoring the right and responsibility of the non-Catholic partner. Some others have emphasized the divine law obligation incumbent on both partners for the religious upbringing of their children.

In view of such diversified treatment of the general legislation, we also find various nuances in the understanding and interpretation of the principles involved in the general legislation. The obligation of the Catholic partner to share with his children his faith, the divine law source of this obligation, its faith and ecclesial dimensions, and its personal and conscientious aspects have been emphasized, in varying degrees, by the Directories. Likewise, the relevance and significance of the Catholic's sincere promise to do his best have been interpreted, with different degrees of emphasis, in view of the joint responsibility of the couple, the mutual respect for each other's religious convictions, and the over-all good of the marriage and the peace and harmony in the home.

CONCLUSION

The question we asked ourselves when undertaking this study was: how do we explain the evolution we find in the understanding of the notion and relevance of sincerity in the promises, in view of the Church's consistent affirmation that in every mixed marriage the divine law requirements must be fulfilled? Our study has led us to the following conclusion: parallel to the change in the legislation on the mixed-marriage promises and in the emphasis on their sincerity, there has also been an evolution in the Church's own perception of what was often referred to as the divine law mandate in a mixed marriage. Both the theological reflection and the positive legislation seem to have been influenced by each other. Whenever its legislation appeared to be pastorally ineffective, the Church re-examined the meaning and extent of what it thought to be the divine law mandate in a mixed marriage, with a view to providing more adequate laws based on sound doctrine and rooted in solid theological presuppositions.

In the pre-Code and Code legislation, the Church maintained consistently that it was of divine law, in a mixed marriage, that dangers to the faith of the Catholic partner be eliminated, and the children's baptism and

upbringing in the Catholic faith be guaranteed. The Church never explained fully the divine law basis of these requirements. Fr. L. Örsy points out quite correctly that

In the past, there was a certainty about the existence of a divine law, but there was not so much theological investigation, if any, into the meaning of the "divine law". The expression was consistently used without a critical assessment of its theological significance.¹

However, the Church's appeal to the divine law seems to have been derived chiefly from the following ecclesiological presuppositions: (1) the Church was convinced that its role in the world was to be the only sacrament of salvation; (2) it believed that it alone possessed the fullness of the true faith without which faith nobody could be saved; (3) the Church considered all those who did not profess the Catholic faith to be in error, and felt duty-bound to lead them into the true faith and, thus, to the way to salvation. In view of these presuppositions, objective truth was given priority over any personal rights and conscientiously held beliefs; consequently, both parents, regardless of their religious affiliation, were considered bound by divine law to have all their children baptized and brought up in the Catholic faith.

A major change in the legislation regarding the promises was introduced to meet the pastoral needs of the

1 L. Örsy, "Mixed Marriages", p. 243.

Church's missionary endeavour, particularly in China, Japan, and the Minor Sunda Islands, beginning in 1938. In the process of this change, in addition to the presuppositions mentioned above, a new principle was adduced, namely, the natural right of every person to marry and have children. In view of the factors influencing the change in the legislation, the divine law obligations also received a new interpretation and a further specification. The fulfilment of these obligations now rested solely on the Catholic partner, who, at the same time, could not be held responsible for the fulfilment of all the obligations in the same manner. Indeed, when circumstances prevented him from having his children baptized and brought up in the Catholic faith, the divine law could not oblige him to do the impossible. Thus, the Church came to the conclusion that the divine law obligations allowed for different degrees: the obligation to safeguard one's own faith is absolute, but the duty to share that faith with one's children is relative and conditional. The Church also concluded that the divine law did not require a guarantee that all the children of a mixed marriage would be baptized and brought up in the Catholic faith, but only a sincere promise from the Catholic partner that he would do his best to achieve that goal.

The present legislation states more clearly what is divine law, what are the obligations it imposes on a Catholic partner to a mixed marriage and how it is mediated. The divine law is the very plan of salvation established by Christ, and, thus, the obligations imposed by it are related to this plan. This divine law receives concrete determinations and specifications according to the various situations in which people find themselves. As far as mixed marriages are concerned, these obligations consist in the Catholic partner's duty before God to live his faith and bear witness to it, and in his sincere determination to do his best to share that faith with his children. Particular legislation enacted by the various Episcopal Conferences has further specified what the divine law would require of a Catholic in the concrete circumstances of a mixed marriage.

Various principles enunciated by the Second Vatican Council seem to have contributed to this particular perception of the divine law obligations: (1) the teachings of Vatican II that the one Church founded by Christ subsists in the Catholic Church with its fullness of grace and means of salvation, but that other ecclesial communities too possess salvific means (Lumen Gentium, par. 8; Unitatis Redintegratio, par. 3-4); (2) that every person has a right to hold firmly to what he believes to be true and good (Dignitatis Humanae,

par. 2-4); hence, in a mixed marriage the partners should respect each other's religious convictions and the responsibilities they entail; (3) that both parents are equally responsible for the religious upbringing of their children; they have the God-given right and duty to fulfil this obligation without any undue pressure or interference (Dignitatis Humanae, par. 5); (4) that the obligation regarding the religious upbringing of the children cannot be considered in isolation, but should be placed within the context of the over-all good of the marriage, an intimate and total communion of life and love, of which children are the supreme gift (Gaudium et Spes, par. 48-50).

The perception of the divine law obligation as reflected in the present legislation seems to point also to other aspects related to our question. The Catholic Church perceives itself as central to the plan of salvation established by Christ. Conscious of its role and mission in the world, it feels duty-bound to aid its members in fulfilling their obligations before God to live their faith and to share it with their children. Again, conscious of its role and mission, the Church claims responsibility to interpret the nature and extent of the divine law in concrete situations. However, this law is promulgated in each individual through his own conscience: "On his part, man

perceives and acknowledges the imperatives of the divine law through the mediation of his conscience" (Dignitatis Humanae, par. 3). In view of this, the obligations of the Catholic partner to a mixed marriage, and the declaration and sincere promise demanded of him can be better described as a personal duty and responsibility in conscience; they can now be referred to as a spiritual mission imposed on him by his own faith-commitment, and deriving from the very fact that he is a Catholic.

In our study we have not endeavoured to evaluate the Church's perception of the divine law requirements as reflected in the present legislation. Nor have we tried to examine the ecumenical aspects and implications of the laws on this matter. These could be areas for further study and research. We have been able to illustrate how, in a very specific area, both the theological reflection and the positive legislation were influenced by each other. The Church enacts legislation which reflects its own grasp of its role and mission in the world at a given time in history. Being a continuously evolving mystery, and constantly called to renew itself to meet new challenges, the Church has no other choice than to make historic options.

BIBLIOGRAPHY

1. Sources and Source Material.

Acta Apostolicae Sedis, Romae, Typis Polyglottis Vaticanis,
1909- .

Acta et Documenta Concilio Oecumenico Vaticano II Apparando,
2 series, 7 vols, [Romae], Typis Polyglottis
Vaticanis, 1961-1969.

Acta Sanctae Sedis, 41 vols, Romae, Ex Typographia Polyglotta
S. C. de Propaganda Fide, 1865-1909.

Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani
Secundi, [Romae], Typis Polyglottis Vaticanis, 1970-

Canon Law Digest, edited by T.L. Bouscaren - J.I. O'Connor,
Milwaukee-New York-Chicago, Bruce Publishing Co.-
Canon Law Digest, 1934- .

Codex Iuris Canonici, Romae, Typis Polyglottis Vaticanis,
1917.

Codicis Iuris Canonici Fontes, 9 vols, P. Gasparri - I. Sarédi,
ed., Romae, Typis Polyglottis Vaticanis, 1923-1939.

Collectanea Constitutionum, Decretorum, Indultorum ac
Instructionum Sanctae Sedis ad Usum Operariorum
Apostolicorum Societatum Missionum ad Exteros, editio
altera, Hongkong, Typis Societatis Missionum ad
Exteros, 1905, xxv-1093 pp.

Collectanea S. Congregationis de Propaganda Fide, 2 vols,
Romae, Ex Typographia Polyglotta S. C. de Propaganda
Fide, 1907.

Communicationes, Pontificia Commissio Codici Iuris Canonici
Recognoscendo, [Romae, Typis Polyglottis Vaticanis],
1969- .

Enchiridion Canonicum seu Sanctae Sedis Responsiones post
editum Codicem I. C. Datae, Editio XI (1917-1963),
C. Sartori - B.I. Belluco, ed., Romae, Pont.
Athenaeum Antonianum, 1963, x-503 pp.

Leges Ecclesiae post codicem iuris canonici editae, X. Ochoa, ed., Roma, Commentarium pro Religiosis, 1966-

Schema Documenti Pontificii Quo Disciplina Canonica De Sacramentis Recognoscitur, [Romae], Typis Polyglottis Vaticanis, 1975, 96 pp.

Sylloge Praecipuorum Documentorum Recentium Summorum Pontificum et S. C. de Propaganda Fide ad Usus Missionariorum, [Romae], Typis Polyglottis Vaticanis, 1939, ix-788 pp.

2. Episcopal Directories.

Argentina, Resoluciones, Conferencia Episcopal Argentina, XXII Asamblea Plenaria, octubre de 1970, nn. 32-38.

Australia, Pastoral Statement on Mixed Marriages, Australian Episcopal Conference, 24 August 1977, Melbourne, A.C.T.S. Publications, [1977], 23 pp. Mixed Marriages. Pastoral Guidelines for Priests, A Supplement to "Pastoral Statement on Mixed Marriages", Australian Episcopal Conference, 24th August 1977, [6 pp].

Austria, Ausführungsbestimmungen der Österreichischen Bischofskonferenz zum Motuproprio "Matrimonia Mixta" vom 31 März 1970 mit praktischen Erläuterungen, [no date], in Österreichisches Archiv für Kirchenrecht, 21(1970), pp. 349-353.

Belgium, Note pastorale des Evêques belges sur les mariages mixtes, 12 octobre 1970, in DC, 67(1970), pp. 1132-1134.

Canada, Mixed Marriage Legislation for Canada, approved by the Canadian Catholic Conference Plenary Assembly - September 20-24, 1971, in Manuscript Letters or Communiques published in the Archdiocese of Ottawa, 2(1971), pp. 302-309.

Ceylon, Mixed Marriages, The Catholic Bishops' Conference of Ceylon, 4th Sept. 1970, 7 pp.

Chile, Normas de la Conferencia Episcopal de Chile acerca de los matrimonios mixtos, [no date], 7 pp.

- China, [Mixed Marriage Norms], Ex Actis Conf. Ep., diebus 24-30 iunii 1970, 1 p.
- England and Wales, Mixed Marriages. A Revised Directory, by the Episcopal Conference of England and Wales, 1977, London, Catholic Truth Society, 1977, 29 pp.
- France, Les mariages mixtes. Nouvelles dispositions pour les diocèses de France, approuvées par l'Assemblée plénière de l'Episcopat français (Lourdes, octobre 1970), in DC, 67(1970), pp. 1123-1131.
- Germany, Ausführungsbestimmungen der katholischen Deutschen Bischofskonferenz über die rechtliche Ordnung konfessionsverschiedener Ehen (23. September 1970), in F. Reinhard, "Mischehe" - Aber Wie?, Kommentar und Dokumente zu Seelorge und Recht bei Ehen konfessionsverschiedener Paare, Göttingen, Vandenhoeck und Ruprecht, 1971, pp. 57-67.
- Holland, Interchurch Marriages. A Joint Declaration by Dutch Catholics and Protestants, 8 May 1971, in One in Christ, 8(1972), pp. 92-96.
- India, [Mixed Marriage Norms], [1970], in CLD, VII, pp. 725-726.
- Ireland, [Mixed Marriage Norms], October 1970, in CLD, VII, pp. 729-730.
- Italy, Norme della Conferenza Episcopale Italiana, 25 settembre 1970, in G. and E. Marcheselli, Matrimoni Interconfessionali e Comunità Cristiana, Roma, Editrice A.V.E., 1973, pp. 161-162.
- Japan, Normae pro Matrimoniis Mixtis, May 1970, [1 p.].
- Malta, Pastoral Letter [...] on Mixed Marriages, September 28, 1970, 3 pp.
- New Zealand, Pastoral Principles and Norms of the Motu Proprio "Matrimonia Mixta", Resolutions of New Zealand Episcopal Conference, April, 1971, Karori, Futuna Press, [1971], 31 pp. Catholic Marriage. A Pastoral Guide, Issued by authority of the New Zealand Episcopal Conference, June, 1976, [6 pp.].

- North Africa, Directives pour l'application du Motu Proprio sur les mariages mixtes, [no date], 4 pp.
- Peru, Disposiciones vigentes de la Conferencia Episcopal sobre matrimonios mixtos, Promulgada en 1972 (16-IX-72), 5 pp.
- Rhodesia, Regulations on Mixed Marriages, 9th September 1970, 2 pp.
- Scotland, Statement by the Scottish Hierarchy, 4 October 1970, in The Tablet, 10 October 1970, p. 99.
- South Africa, Motu Proprio on Mixed Marriages. Resolutions, Southern African Catholic Bishops' Conference Extraordinary Plenary Session, 1-4 September 1970, in CLD, VII, pp. 727-729.
- Spain, Normas de la Conferencia Episcopal Española para la aplicación en España del Motu Proprio de S. S. sobre los matrimonios mixtos, 25 de enero de 1971, in G.H. Julian, Los Matrimonios Mixtos en España, Madrid, Propaganda Popular, 1975, pp. 247-253.
- Switzerland, L'application du Motu proprio sur les mariages mixtes - Directives des Evêques suisses, 16 septembre 1970, in DC, 67(1970), pp. 1031-1033.
- Tchad, Document d'applications du Motu Proprio sur les mariages mixtes, [no date], 6 pp.
- Thailand, Promulgation of the Episcopal Conference of Thailand Concerning the Apostolic Letter of Pope Paul VI issued "Motu Proprio" Determining Norms for Mixed Marriages, [no date], 14 pp.]
- Togo, Motu Proprio "Matrimonia Mixta" établissant les normes relatives aux mariages mixtes et dispositions communes de la Conférence épiscopale du Togo, 21 janvier 1971, 14 pp.
- United States of America, Statement of the National Conference of Catholic Bishops on the Implementation of the Apostolic Letter on Mixed Marriages, January 1, 1971, in CLD, VII, pp. 730-740.

Zaire, Décision de la Conférence Episcopale nationale du Congo concernant les numéros 7-9 et 10 du Motu Proprio "Matrimonia Mixta" du 31 mars 1970, 23 octobre 1970, 12 pp.

3. Rotal Decisions.

August 11, 1921, c. F. Solieri, S.R.R. Dec., 13(1929), pp. 210-222.

March 3, 1942, c. A. Wynen, Ibidem, 34(1951), pp. 123-140.

January 26, 1948, c. F. Brennan, Ibidem, 40(1958), pp. 38-48.

April 4, 1951, c. P. Felici, Ibidem, 43(1961), pp. 259-268.

February 19, 1952, c. A. Fidecicchi, in ME, 77(1952), pp. 589-596.

February 26, 1952, c. F. Brennan, S.R.R. Dec., 44(1962), pp. 129-135.

March 28, 1952, c. D. Staffa, Ibidem, 44(1962), pp. 193-197.

July 10, 1958, c. I.M. Pinna, Ibidem, 50[1968], pp. 446-457.

4. Books.

Aryinhac, H.A. - P.J. Lydon, Marriage Legislation in the New Code of Canon Law, Fourth Revised Edition, New York, Benziger Brothers, 1959, xxiv-397 pp.

Bangen, I.H., Instructio Practica de Sponsalibus et Matrimonio in Usum Sacerdotum Curatorum. IV, De Matrimonio Mixto, Monasterii, Typis et Sumptibus Librariae Aschendorffianae, 1860, 222 pp.

Beck, B., De Cautionibus Sincere Praestandis in Matrimoniis Quibus Obstat Impedimentum Mixtae Religionis aut Disparitatis Cultus, Romae, Pontificium Athenaeum Antonianum, 1956, xi-117 pp.

- Bertrams, W. [et alii], De Matrimonio Coniectanea, Roma
Università Gregoriana Editrice, 1970, viii-967 pp.
- Blat, A., Commentarium Textus Codicis Iuris Canonici.
Liber III, De Rebus, Pars 1, De Sacramentis, editio
secunda, Romae, Typographia Pontificia in Instituto
Pii IX, 1924, vii-762 pp.
- Böckle, F. [et alii], Le problème des mariages mixtes. Col-
loque de Nemi, Paris, Les Editions du Cerf, 1969,
160 pp.
- Bouscaren, T.L. [et alii], Canon Law. A Text and Commentary.
Fourth Revised Edition, Milwaukee, Bruce Publishing
Company, 1966, xvi-1011 pp.
- Boyle, D.J., The Juridic Effects of Moral Certitude on Pre-
Nuptial Guarantees. A Historical Synopsis and Com-
mentary, Washington, D.C., The Catholic University
of America Press, 1942, xii-188 pp.
- Cappello, F.M., Tractatus Canonico-Moralis De Sacramentis,
Vol. V, De Matrimonio, editio septima, Torino,
Marietti, 1961, xi-961 pp.
- Caprile, G., Il Sinodo dei Vescovi. Prima Assemblea Generale
(29 settembre - 29 ottobre 1967), Roma, Edizioni "La
Civiltà Cattolica", 1968, x-672 pp.
- Chelodi, J., Ius Matrimoniale iuxta Codicem Iuris Canonici,
editio tertia, Tridenti, Libr. Edit. Tridentum,
1921, vii-218 pp.
- Chelodi, J. - P. Ciprotti, Ius Canonicum de Matrimonio et de
Iudiciis Matrimonialibus, editio quinta, Vicenza,
Società Anonima Tipographica Editrice, 1947,
xi-296 pp.
- Concetti, G., Bilancio e Documenti del Sinodo dei Vescovi.
Documenti Ufficiali, Commenti, Dichiarazione, Echi
della stampa sulla prima assemblea generale (29
settembre - 29 ottobre 1967), Milano, Massimo, 1968,
432 pp.
- Coronata, M.C., Institutiones Iuris Canonici ad Usus Utrius-
que Cleri et Scholarum. Tractatus Canonicus. Vol.
III, De Sacramentis, editio tertia, Romae, Marietti,
1957, xii-1210 pp.

- Doheney, W.J., Canonical Procedure in Matrimonial Cases.
Vol. I, Formal Judicial Procedure, Second Edition,
Milwaukee, Bruce Publishing Company, 1948, 1-1277 pp.
- Doyle, V.J., The Pre-Nuptial Promises in Mixed Marriages.
An Historical and Canonical Analysis, unpublished
doctoral dissertation, The Catholic University of
America, 1968, x-284 pp.
- Feye, H.J., Dissertatio Canonica de Matrimoniis Mixtis,
Lovanii, Universitatis Typographi-Valintheout et
Vandenzande, 1847, [x]-267 pp.
- , De Impedimentis et Dispensationibus Matrimonialibus,
In Usum Auditorum Suorum, editio tertia, Lovanii,
Typis Caroli Peeters, 1885, 840 pp.
- Flader, J.M., Los Matrimonios Mixtos ante la Reforma del
Codigo de Derecho Canonico, Pamplona, Ediciones
Universidad de Navarra, 1971, 251 pp.
- Gargan, J.P., Mixta Religio: Praesertim Attentis Optatis
A Scriptoribus Hodiernis. Excerpta ex dissertatione
ad lauream consequendam, Romae, Pontificia Universita
Lateranense, 1965, 66 pp.
- Gasparri, P., Tractatus Canonici de Matrimonio, editio nova
ad mentem Codicis I.C., 2 vols, [Romae], Typis
Polyglottis Vaticanis, 1932.
- Hagan, J., Sincerity and the Pre-Nuptial Guarantees, un-
published doctoral dissertation, Rome, Angelicum,
[1949], ii-183 pp.
- Hebblethwaite, P., Understanding the Synod, Dublin and
Sydney, Gill and Son, 1968, 178 pp.
- Konda, B.A., The Changing Attitudes of the Catholic Church
Towards Mixed Marriages, unpublished doctoral
dissertation, The Catholic University of America,
1971, ix-232 pp.
- Lourdusamy, S.D., Pre-Nuptial Guarantees According to the
Jurisprudence of the Holy Office, Pondicherry,
S. India, The Mission Press, 1959, xii-203 pp.

- Ma, Hsiao-Hsien, P., De Matrimoniis a Fidelibus sive inter se sive cum A Catholicis Tempore Occupationis Communistarum Praesertim in Sinis Contractis, Sassoferato (Ancona), Edizioni "La Pace", 1958, 101 pp.
- Marcheselli, G. and M., Matrimoni Interconfessionali e Comunità Cristiana, Roma, Editrice A.V.E., 1973, 254 pp.
- Mixed Marriages. An Honest Appraisal, St. Meinrad, Indiana, Abbey Press, 1966, 128 pp.
- Morales, J.F., Mixed Marriages and the Second Vatican Council. A Comparative Study in Latin and Oriental Canon Law, Rome, Pontificia Universitas Lateranensis, 1966, xv-218 pp.
- O'Keeffe, G.M., Matrimonial Dispensations. Power of Bishops, Priests and Confessors, Washington, D.C., The Catholic University of America Press, 1927, viii-232 pp.
- Payen, G., De Matrimonio in Missionibus ac Potissimum in Sinis. Tractatus Practicus et Casus, 3 vols, editio altera, Zi-ka-wei, Typographia T'ou-Sè-wè, 1935-1936.
- Petrovits, J., The New Church Law on Matrimony, Philadelphia, J.J. McVey, 1921, xvi-485 pp.
- Raamsdonk, G., De Cessatione Impedimenti Disparitatis Cultus in Extraordinariis Circumstantiis, Roma, Ius Seraphicum, 1955, viii-106 pp.
- Roskavány, A., De Matrimoniis Mixtis inter Catholicos et Protestantés, 8 vols, Pestini and Nitriæ, Typis Licei Episcopalis [et alibi], 1842-1887.
- Schenk, F.J., The Matrimonial Impediments of Mixed Religion and Disparity of Cult, Washington, D.C., The Catholic University of America, 1929, xvi-306 pp.
- Siegle, B.A., Marriage Today. A Commentary on the Code of Canon Law in the Light of Vatican II and the Ecumenical Age, Second Edition, New York, Alba House, 1973, 347 pp.
- Ter Haar, F., Mixed Marriages and Their Remedies. Translated by A. Walter, New York, Frederick Pustet, 1933, xvii-201 pp.

- Ting Pong Lee, I., Facultates Apostolicae S. C. de Prop. Fide et S. C. Consistorialis, Roma, Commentarium pro Religiosis, 1962, 517 pp.
- Tomko, J., Matrimoni Misti, Napoli, Edizioni Doheniane, 1971, 223 pp.
- Vlaming, Th. M. - L. Bender, Praelectiones Iuris Matrimonii ad Normam Codicis Iuris Canonici, editio quarta, Bussum in Hallandia, Paulus Brand, 1950, xx-574 pp.
- Vromant, G., Ius Missionariorum. Tomus V, De Matrimonio, editio altera, Bruxelles, L'Edition Universelle, 1938, xii-385 pp.
- Wang, A., De Dispensatione super Impedimento Disparitatis Cultus maxime in Sinis. Excerpta ex dissertatione ad lauream in Facultate Iuris Canonici Pontificiae Universitatis Gregoriana, Shanghai, Typographia Tou-Sè-Wè, 1951, iv-34 pp.
- Wernz, F.X. - P. Vidal, Ius Canonicum ad Codicis Normam Exactum. Tomus V, Ius Matrimoniale, editio altera, Romae, Apud Aedes Universitatis Gregoriana, 1928, xv-868 pp.
- White, R.J., Canonical Ante-Nuptial Promises and the Civil Law, Washington, D.C., The Catholic University of America Press, 1934, v-152 pp.
- Woywod, S. - C. Smith, A Practical Commentary on the Code of Canon Law, Revised and Enlarged Edition, New York, Joseph F. Wagner, 1962, xvii-1020 pp.
- Zizola, G., Il Sinodo dei Vescovi. Cronaca-Bilancio-Documentazione, Torino, Borla Editore, 1968, 433 pp.

5. Articles.

- Allen, W.F., "The Insincerity of the 'Cautiones' - Disparity of Worship", in The Jurist, 16(1956), pp. 59-86.
- [Anonymous], "De Cautionibus Matrimonialibus", in JP, 13(1933), pp. 207-214.

- [Anonymous], "The Invalidity of a Dispensation because of Insincere Promise", in The Jurist, 9(1949), pp. 50-64.
- , "Matrimonia Mixta: Some Episcopal Directories", in One in Christ, 7(1971), pp. 216-233.
- Banks, R.J., "The Instruction on Mixed Marriages", in HPR, 67(1966), pp. 129-134.
- Barberena, G.R., "Los Matrimonios Mixtos en Perspectiva Ecu  nica", in Lex Ecclesiae. Estudios en Honor del Dr. Marcellino Cabreros de Anta, Canonista Salamanticense, Salamanca, Universidad Pontificia, 1972, pp. 369-394.
- Baum, G., "Mixed Marriages and the Council", in The Ecumenist, 1(1962), pp. 23-25.
- , "Mixed Marriage: An Ecumenical Issue", Ibidem, 4(1966), pp. 73-76.
- Beaup  re, R., "Mixed Marriages at the Synod of Bishops", in One in Christ, 4(1968), pp. 170-186.
- , "The Education of the Children of Mixed Marriages", Ibidem, pp. 189-202.
- Bender, L., "Cautiones non Sincerae et Validitas Dispensationis", in Doctor Communis, 2(1949), pp. 56-62.
- , "Cautiones non Sincerae", in ME, 80(1955), pp. 320-323.
- Berger, J., "Those Pre-Marital Promises", in HPR, 68(1968), pp. 575-579.
- Bernhard, J., "Le deuxi  me concile du Vatican et le probl  me des mariages mixtes", in RDC, 11(1961), pp. 151-163.
- Bernhard, J. - H. Legrand, "L'Instruction 'Matrimonii Sacramentum' sur les mariages mixtes", in RDC, 16(1966), pp. 58-73.
- Bertrams, W., "Questioni canonico-pastorali dei matrimoni misti", in La Collegialit   Episcopale per il futuro della Chiesa dalla Prima alla Seconda Assemblea del Sinodo dei Vescovi. Opera Collettiva a Cura di V. Fagiolo e G. Concetti, Firenze, Vallecchi Editore, 1969, pp. 480-498.

- Bertrams, W., "De Matrimoniis Mixtis", in De Matrimonio Coniectanea, pp. 83-95.
- Böckle, F., "Mixed Marriages: A Roman Catholic View", in Concilium, 4(1965), pp. 60-63.
- , "Questions théologiques touchant la révision de la législation sur les mariages mixtes", in Istina, 12(1967), pp. 167-178.
- , "Il problema dei matrimoni misti dal punto di vista teologico", in Diritto del Sesso e Matrimonio, Milano, Arnoldo Mandadori Editore, 1968, pp. 293-309.
- Bonhome de, A., "Motu Proprio 'Matrimonia Mixta' du 31 mars 1970 sur les mariages mixtes", in NRT, 92(1970), pp. 655-664.
- Cahil, W., "Change the Marriage Law?", in HPR, 64(1963), pp. 115-129.
- Catoir, J.R., "The Promises in a Mixed Marriage", in America, 120(1969), pp. 446-449.
- Connell, F.J., "The Mixed-Marriage Promises", in Background to Morality, Edited by J.P. Lerhin, New York, Desclée, 1964, pp. 185-194.
- , "Divine and Human Laws on Mixed Marriages", in AER, 155(1966), pp. 201-205.
- Connick, A.J., "Canonical Doctrine concerning Mixed Marriages - Before Trent and during the Seventeenth and Early Eighteenth Centuries", in The Jurist, 20(1960), pp. 295-326, 398-418.
- Connolly, T. J., "Mixed Marriages: A Sign of Division among Christians", in ACR, 47(1970), pp. 265-277.
- Cooney, J.P., "The Pastoral Response to the New Marriage Regulations", in Dimension, 3(1971), pp. 37-40.
- Cornélis, J., "Les mariages mixtes et le premier synode épiscopal", in Unitas, 14(1968), pp. 133-147.

Curran, C.E., "The Mixed Marriage Promises - Arguments for Suppressing the 'Cautiones'", in The Jurist, 25(1965), pp. 83-91.

-----, "The Mixed Marriage Promises", in A New Look at Christian Morality, Notre Dame, Indiana, Fides Publishers, 1968, pp. 177-199.

Daly, C.B., "Inter-Church Marriages: The Position of the Irish Episcopal Conference", in The Furrow, 25(1974), pp. 29-33.

Daniel, W., "Mixed Marriages - The New Promises", in ACR, 48(1971), pp. 196-210.

Davey, T., "Mixed Marriages: A Note on the Promises", in CR, 54(1969), pp. 559-567.

Deane, D., "Mixed Marriage: Irish and Swiss Bishops' Statements Compared", in The Furrow, 25(1974), pp. 544-548.

Defourney, J., "De Necessitate Certitudinis Moralis in Cautionibus Aequipollentibus", in The Japan Missionary Bulletin, 19(1965), pp. 496-504, 577-583, 604, 644-727.

Denis, J., "L'Instruction 'Matrimonii Sacramentum' de la Congrégation pour la doctrine de la Foi sur les mariages mixtes", in AC, 11(1967), pp. 154-163.

Dowling, P.J., "Mixed Marriage: Ecumenical Principles of the New Legislation", in Dimension, 3(1971), pp. 30-32.

Fagiolo, V., "Aspetti giuridico-pastorali della nuova problematica sui matrimoni misti", in Ius Populi Dei. Miscellanea in honorem Raymundi Bidagor, Vol. III, Romae, Pontificia Università Gregoriana, 1972, pp. 377-411.

Feghali, J., "A propos du mariage entre catholiques et chrétiens de confessions différentes", in AC, 15(1971), pp. 215-232.

Filipiak, B., "De Matrimoniis Mixtis iuxta novam disciplinam motu proprio diei 31 martii 1970 inductam", in DE, 82(1971), pp. 163-166.

- Funk, J., "Acerca de la Instrucción de la Sagrada Congregación 'Pro Doctrina Fidei' sobre los Matrimonios Mixtos", in Revista Española de Derecho Canónico, 21(1966), pp. 317-343.
- Gallen, G.C., "The Sincerity of Guarantees in Mixed Marriages", in ACR, 33(1956), pp. 136-142.
- , "The Promise concerning the Catholic Education of the Children of Mixed Marriages", in ACR, 38(1961), pp. 149-154.
- Gerhartz, J.G., "Die Mischehe, das konzil und die Mischehen-Instruktion", in Theologie und Philosophie, 41(1966), pp. 376-400.
- , "Die katholische Kindererziehung in der Mischehe und das göttliche Recht", Ibidem, 42(1967), pp. 552-576.
- , "Mischehen ohne kautelen - Zum römischen Dispenspraxis bei ungegessicherter katholischer Kindererziehung", Ibidem, 44(1969), pp. 67-91.
- , "Das Mischehenrecht Papst Paulus VI. Die Bischofssynode (1967) und das Motu Proprio 'Matrimonia Mixta' (1970)", Ibidem, 45(1970), pp. 481-525.
- Hanrahan, P.J., "Insincere Guarantees and Mixed Marriage", in CR, 40(1955), pp. 742-746.
- Hardon, J.A., "Mixed Marriages: A Theological Analysis", in Eglise et Théologie, 1(1970), pp. 229-260.
- Häring, B., "Mariage Mixte et Concile", in NRT, 84(1962), pp. 699-708.
- , "The Family as a Community for Salvation: Mixed Marriages", in Marriage in the Modern World, Westminster, Maryland, The Newman Press, 1966, pp. 195-257.
- Harrington, J.C., "The Importance of the 'Cautiones' in Disparity of Worship", in ER, 65(1921), pp. 257-262.
- Hayes, L.J., "Ideas of the 'Mixed Marriage' Promises - Can They be Made more Palatable?", in HPR, 65(1965), pp. 574-580.

- Hellbernd, P., "De praxi circa Matrimonia Mixta in Germania Celebrata Servanda", in Periodica, 59(1970), pp. 177-183.
- Hickey, J.L., "Christian Ecumenical Marriages: A Major Pastoral Concern", in Journal of Ecumenical Studies, 7(1970), pp. 707-720.
- Hotchkin, J., "Mixed Marriage: Review and Preview", in HPR, 71(1971), pp. 335-347.
- Huysmans, R.G.W., "De Ortu Impedimentorum Mixtae Religionis ac Disparitatis Cultus", in EIC, 23(1967), pp. 187-261.
- , "De Vicissitudinibus Impedimenti Mixtae Religionis a Reformatione Protestantica usque ad Codicem Iuris Canonici", in EIC, 25(1969), pp. 205-291.
- Kelly, K.T., "A New Deal for Interchurch Marriages - Comments on the Recent Motu Proprio", in CR, 55(1970), pp. 621-645.
- Kelly, N.J., "Insincere 'Cautiones' in the Light of Recent Rotal Decisions", in The Jurist, 13(1953), pp. 33-56.
- Kovács, L., "Mixed Marriages and Divine Law", in CR, 49(1964), pp. 149-159.
- Labelle, J.P., "De Cautionibus Aequipollentibus", in The Japan Missionary Bulletin, 19(1965), pp. 255-258.
- , "Les cautions équipollentes concédées au Japon", in RDC, 16(1966), pp. 159-206.
- Lefebvre, C., "Quelle est l'origine des expressions 'Matrimonia Mixta' et 'Mixta Religio'?", in Ius Populi Dei, Vol. III, pp. 361-373.
- Lynch, J.E., "Ecumenical Marriages", in Proceedings, Canon Law Society of America, 35(1973), pp. 33-54.
- , "Mixed Marriages in the Aftermath of 'Matrimonia Mixta'", in Journal of Ecumenical Studies, 11(1974), pp. 637-659.

- Madden, J., "Mixed Marriages. The Instruction of the S. Congregation 'Pro Doctrina Fidei'", in ACR, 43(1966), pp. 153-161.
- Mahfoud, P., "Les mariages mixtes: Etude historico-canonique", in Apollinaris, 36(1965), pp. 84-94.
- Mahoney, E.J., "Mixed Marriages - Nullity Through Insincere Guarantees", in CR, 38(1953), pp. 678-680.
- May, G., "Die Mischehenfrage auf der ersten Generalversammlung der Bischofssynode", in Osterreichisches Archiv für Kirchenrecht, 21(1970), pp. 233-266.
- McKee, J., "Mixed Marriages and Divine Law: Another View", in CR, 49(1964), pp. 415-428.
- McReavy, L.L., "Effect of Insincerity in Mixed Marriage Guarantees", in CR, 44(1959), pp. 370-373.
- Mörsdorf, K., "Matrimonia Mixta - Zur Neuordnung des Mischehenrechtes durch das Apostolische Schreiben 'Matrimonia Mixta' Papst Paul's VI. vom 31 März 1970", in Archiv für Katholisches Kirchenrecht, 139(1970), pp. 349-404.
- Navarrete, U., "Adnotationes ad Instructionem 'Matrimonii Sacramentum'", in Periodica, 55(1966), pp. 755-769.
- , "Matrimonia Mixta in Synodo Episcoporum", in Periodica, 57(1968), pp. 653-692.
- , "Commentarium Canonicum ad Litt. Ap. Motu Proprio datas 'Matrimonia Mixta'", in Periodica, 59(1970), pp. 423-469.
- O'Donnell, M.J., "Mixed Marriage Guarantees", in IER, 18(1921), pp. 411-418.
- Oesterle, G., "De Cautionibus Matrimonialibus", in JP, 14(1934), pp. 270-276; 15(1935), pp. 64-81, 191-201.
- , "Quaestio de Cautionibus in Missionibus", in Commentarium pro Religiosis et Missionariis, 19(1938), pp. 101-109.

Oesterle, G., "De Cautionibus Matrimonialibus", in Consultationes de Iure Matrimoniali, Romae, Officium Libri Catholici, 1942, pp. 157-186.

-----, "De Cautionibus Fictis", in EIC, 8(1952), pp. 70-74.

O'Higgins, B., "Mixed Marriages: The 'Cautiones'", in ITQ, 41(1974), pp. 205-221, 274-288.

O'Neill, P., "Disparity of Worship and Fictitious Guarantees", in IER, 41(1933), pp. 630-635.

Örsy, L.M., "The Complex Question of Mixed Marriages", in The Heythrop Journal, 4(1963), pp. 367-385.

-----, "Liberté de conscience et mariages mixtes", in Relations, 283(1964), pp. 194-197.

-----, "Documenta Selecta de Educatione Religiosa Proles ex Matrimonio Mixto Natae", in Periodica, 53(1964), pp. 267-284.

-----, "The Religious Education of Children Born from Mixed Marriages", in Gregorianum, 45(1964), pp. 739-760.

-----, "Mixed Marriages: The New Instruction", in The Dublin Review, 240(1966/67), pp. 358-377.

-----, "Mixed Marriages", in America, 117(1967), pp. 242-245.

-----, "Mixed Marriages", in Concilium, 8(1968), pp. 32-37.

Park, C., "Insincere Ante-Nuptial Guarantees", in ER, 91(1934), pp. 446-459.

Parres, C.L., "Insincerity of Promises and Validity of Marriage", in HPR, 59(1958), pp. 190-192.

Petroncelli, M., "Presupposti dei Matrimoni Misti et Limiti 'In Iure Condito'", in Ius Populi Dei, Vol. III, pp. 415-437.

Picozza, P., "Osservazioni sul Motu Proprio 'Matrimonia Mixta' alla Luce dei Principi Conciliari", in DE, 81(1970), pp. 350-387.

- Planchard, J., "Dispense de disparité de culte et de religion mixte - Pratique, Indults et Instructions du Saint-Siège", in NRT, 15(1883), pp. 392-441, 500-531, 573-601.
- Regatillo, E.F., "Instrucción sobre Los Matrimonios Mixtos", in Sal Terrae, 54(1966), pp. 266-274.
- Ribas Bracons, J.M., "La Nueva Regulación de Los Matrimonios Mixtos", in Jus Canonicum, 7(1967), pp. 187-205.
- Sadlowski, E.L., "Mixed Marriages", in The Priest, 19(1963), pp. 203-209.
- Schierse, P.J., "New Mixed Marriage Norms: Practical and Procedural Aspects for Chancery Personnel", in The Catholic Lawyer, 17(1971), pp. 123-136.
- Silvestrelli, A., "Adnotationes Matrimonii Sacramentum", in ME, 91(1966), pp. 224-238.
- Timmermans, F., "New Norms for Mixed Marriages", in African Ecclesiastical Review, 12(1970), pp. 335-345.
- Ting Pong Lee, I., "Novissimae Facultates Missionariae: Fac. 15. Dispensatio ab Impedimentis Matrimonialibus", in Commentarium pro Religiosis et Missionariis, 54(1973), pp. 338-353.
- Tomko, J., "Aspetti teologici della problematica dei matrimoni misti", in La Collegialità Episcopale, pp. 446-479.
- , "De Litteris Apostolicis 'Matrimonia Mixta'", in ME, 95(1970), pp. 171-187.
- Toso, A., "In Praecedentem Dissertationem Animadversiones", in JP, 15(1935), pp. 196-201.
- Wanenmacher, F., "Insincere Pre-Nuptial Promises", in HPR, 37(1937), pp. 406-409.
- Walsh, V.M., "Canonical Aspects of the New Mixed Marriage Legislation", in Dimension, 3(1971), pp. 34-36.
- Wesselman, R.G., "The Mixed Marriage Promises - Arguments for Retaining the 'Cautiones'", in The Jurist, 25(1965), pp. 92-105.

Woywod, S., "Insincere Promises and Validity of Dispensation from Impediment of Disparity of Worship", in HPR, 34(1933-1934), pp. 518-520.

-----, "Concerning the Evidence of Sincerity of Promises in Mixed Marriages", in HPR, 39(1938), pp. 172-173.

Zalba, M., "Motu Proprio Matrimonia Mixta", in Estudios Eclesiásticos, 46(1971), pp. 233-238.

SUMMARY

This study is an examination of the evolution in the understanding of the notion and significance of sincerity in the mixed-marriage promises. It was carried out through an analysis of: the legislation to be found in the pre-Code Papal pronouncements and Curial texts studied in their historical context and doctrinal setting (Chapter I); the legislation in the Codex Iuris Canonici (Chapter II); the post-Code legislation (Chapter III); the Rotal jurisprudence (Chapter IV); the Conciliar vota, schemata, deliberations, and decisions (Chapter V); the Instruction, Matrimonii Sacramentum, and the subsequent replies from the Sacred Congregation for the Doctrine of the Faith (Chapter VI); the deliberations and decisions of the 1967 Synod of Bishops (Chapter VII); the Motu Proprio, Matrimonia Mixta (Chapter VIII), and its application by the various Episcopal Conferences (Chapters IX and X).

The study concludes that the requirement of sincerity in the promises has received different interpretations and emphases over the years. In the pre-Code and Code periods, it was seen primarily in its relation to the validity of a dispensation. However, the introduction of the cautiones aequipollentes into the mixed-marriage legislation, which seems to have paved the way for the present legislation,

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gave a new meaning and dimension to the requirement of sincerity in the promises. Then, the principles enunciated and implied in the documents of Vatican II helped to bring about further clarifications and specifications regarding the requirement of sincerity in the promises. According to the present legislation to be found in Matrimonia Mixta and its application by the various Episcopal Conferences, the declaration and sincere promise demanded of the Catholic partner appear to be a reminder to him of his grave obligations before God to safeguard his faith and to bear witness to it, and also to do his best, in the concrete circumstances of his marriage, to share that faith with his children.

This study also concludes that, parallel to the evolution in the understanding of the notion and significance of sincerity in the promises, there has also been a gradual change in the Church's own perception of what was often referred to as the divine law requirements in a mixed marriage. While in the earlier legislation the Church simply appealed to the divine law mandate without any explanation, the present legislation states more clearly what is divine law, how it is mediated, and what it requires of the Catholic partner in the context of a mixed marriage.

The evolution in the Church's perception of what it thought to be the divine law mandate in a mixed marriage

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appears to be an example of how the theological reflection and the positive legislation have been influenced by each other. Likewise, this parallel evolution also seems to indicate how the enactment of a particular ecclesial legislation is the concrete manifestation of a historic option: the Church enacts legislation reflecting its own grasp of its role and mission in the world at a given time in history.