

UNITY, DIVERSITY, ANCIENT WISDOM AND MODERN DEVELOPMENT: THE CATHOLIC CHURCH'S APPROACH TO MIXED AND DISPARITY OF WORSHIP MARRIAGES

INTRODUCTION

This paper will trace the history of canons 1086 and 1124 – 1129, which govern the impediment of disparity of worship and the requirement for permission for mixed marriages. It will try to show how they represent a development of canon law, preserving older cautions, but adding greater understanding. Canon 1086 of the 1983 code describes the impediment of disparity of cult, which if not dispensed, invalidates a marriage between a Catholic and a person who is not baptized.¹ Paragraph 2 provides that such dispensation is not to be given unless the conditions for permission for a mixed marriage as described in canons 1125 and 1126 are satisfied. Canon 1124 provides that there should be no marriage between a Catholic and a non-Catholic baptized person without the express permission of the competent authority, usually the local ordinary. Canon 1125 gives the instruction that a local ordinary should give this permission only if: (1) the Catholic party declares his intention to remove dangers of defecting from the faith and promises to do all he can to raise the children of the union as Catholics; (2) the non-Catholic party is informed of these promises; and (3) both parties are instructed about the essential purposes and nature of marriage, which neither can exclude. Canon 1126 calls for the conferences of bishops to establish the method for these conditions to be satisfied. Canons 1127 and 1129 provide that, in general, canonical form must be observed for either a disparity of worship or a mixed marriage, but that the local ordinary can dispense from this requirement.

¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983) c. 1086.

And canons 1128 and 1129 call for local ordinaries and other pastors of souls to have particular concern for Catholic spouses and their children in such marriages.

As cautious as these provisions are, they represent a much more positive view of marriages between Catholics and non-Catholics than canon law has historically done. The early Church usually forbade marriages between Catholics and non-Christians or heretics, but did not generally hold them to be invalid; there were, however, some exceptions. Canon law gradually developed the theology that disparity of worship marriages are invalid, and that mixed marriages are forbidden, although usually valid. As both Protestantism and the missions spread, the Church grudgingly gave dispensations for such weddings, but with many warnings. But with a more positive view of other faiths, canon law has in more recent times taken a more accepting view of such marriages in recent, although still with cautions.

This paper will trace the history of Church's canonical treatment of such marriages in six parts: (1) the early theologians and local councils of the Church; (2) the treatment of such marriages during the early Middle Ages; (3) developments of the high Middle Ages; (4) the early modern era with the implications of the Council of Trent and the new issues arising from the Protestant Reformation and increased missionary activity; (5) the early 20th century and provisions of the 1917 Code; and (6) the effect of the Vatican II Council and subsequent developments as they led up to the 1983 Code. The paper will then conclude with a description of this development as an example of how Church practice can advance and yet remain true to fundamental principles that are based upon centuries of experience.

I. Church Fathers and Councils in the Early Church

The Fathers of the Church and early Church councils either strongly discouraged or forbade marriages between Catholics and either heretics or non-Christians.² Early theologians strongly warned against such marriages as creating division within the family and threats to the faith; early Church councils also *usually* forbade them, but they apparently recognized their validity.

Particularly vehement was Tertullian, who in book II of his essay *To His Wife*, denounced marriages between Christians and non-Christians as sinful and dangerous to the faith. He apparently held such marriages to be invalid; for he said, “It is evident that Christians who enter into marriages with pagans commit the sin of fornication and are to be cut off completely from communion with the brethren.”³ In *The Lapsed*, St. Cyprian of Carthage listed “marriages contracted with heathen” as one of the reasons why God had allowed the Church to be persecuted again in the years 250-251.⁴

Perhaps the most lengthy comments on marriages between Christians and pagans was from Saint Ambrose, who in his commentary *On Abraham*, drew an analogy to Abraham’s prohibition on letting his son Isaac marry a Canaanite woman and concluded likewise that Christians should not marry pagans, for fear of family division and threats to the faith. Among other things he warned that purity is threatened by a pagan spouse, and observed, “often the

² See Frank Schenk, *The Matrimonial Impediments of Mixed Marriage and Disparity of Cult* (Washington, D.C.: Dissertation of the Catholic University of America, 1929) 18 [hereafter *Mixed Marriage and Disparity of Cult*]; Benjamin Bria, *The Development of Mixed Marriage Legislation through Missionary Law From 1622 to Present* (Ottawa, Canada: Dissertation of St. Paul University: 1993) 58-59 (hereafter *The Development of Mixed Marriage Legislation*).

³ Tertullian, *To His Wife*, book II, ch. 3, in *Treatises on Marriage and Remarriage : To His Wife, An Exhortation to Chastity, Monogamy*, ed. and trans. by William Le Saint (Westminster, MD: The Newman Press, 1951) no. 13 of *Ancient Christian Writers: The Works of the Fathers in Translation*, ed. by Jonannas Quasten and Joseph Plumbe (Westminster, MD: The Newman Press 1951).

⁴ St. Cyprian of Carthage *The Lapsed* cap. 6, in *The Lapsed ; The Unity of the Catholic Church* ed. and translated by Maurice Bévenot Westminster, Md: Newman Press, 1957) 17, no. 25 of *Ancient Christian Writers: The Works of the Fathers in Translation* ed. by Jonannas Quasten and Joseph Plumbe (Westminster, MD: The Newman Press 1951).

allurements from women deceive the bravest married man and make him separate from his religion.” He also asked, “how is charity able to come together if the faith differs?”⁵ Likewise, in a letter to the Bishop Vigilus in 385, he wrote, “there is hardly anything more deadly than being married to one who is a stranger to the faith, where the passions of lust and dissension and the evils of sacrilege are inflamed.”⁶ Drawing a lengthy analogy to the deception of Samson by the pagan woman Delila, he concluded “Because of this example, men should avoid marriage with those outside the faith, lest, instead of love of one’s spouse, there be treachery.”⁷

Regarding marriages to heretics, Saint Augustine also warned against such mixed marriages, although did not strictly forbid them. Thus, for example, in a letter commending Bishop Maximin for resolving conflicts in the Church, Saint Augustine drew compared divisions within the Church to divisions within the family, saying, “Do we not grievously lament that husband and wife do in most cases, when marriage makes them one flesh, vow mutual fidelity in the name of Christ, and yet rend asunder Christ’s own body by belonging to separate communions.”⁸

Early Church councils also generally forbade marriages with pagans and heretics, but the rules varied from place to place.⁹ The Council of Elvira seems to be the first local council to deal with the issue; and it focused more on women marrying non-Catholic men than the reverse, perhaps on the assumption that the man’s faith would be dominant. Thus, canon 15 provided,

⁵ St. Ambrose, *On Abraham*, Lib. I. cap. 9 n. 84 in *Sancti Ambrosii Opera Pars I (2)*, ed. by Karl Schenkl et al. (Vindobonae: F. Tempsky 1897) 554 – 556, vol. 32 in *Corpus Scriptorum Ecclesasticorum Latinorum* (my translation).

⁶ *Letter to Vigilus* in *Saint Ambrose Letters*, trans. by Sister Mary Melchior Beyenna, O.P (Washington, D.C.: Catholic University of America Press, 1954) 174, 176.

⁷ *Ibid.* 176 – 188.

⁸ See Saint Augustine, Ep. XXIII n. 5 in “The Letters of Saint Augustin,” ed. by J.G. Cunningham in *The Confessions and Letters of Saint Augustin*, ed. and trans, by Philip Schaff (Peabody, MA: Henrickson Publishers 1994) 242, 244, vol. I in *Nicene and Post-Nicene Church Fathers*, First Series.

⁹ Schenk in *Mixed Marriage and Disparity of Cult*, 24-25; Bria in *The Development of Mixed Marriage Legislation*, 59-62. It should be noted the Fr. Schenk and Mr. Bria do not think that there was a distinction between mixed and disparity of worship marriages. But, as will be noted below, some of the canons do seem to make this distinction.

“Christian girls are not to marry pagans, no matter how few eligible men there are.” Canon 16 went on to say that “Catholic girls may not marry Jews or heretics, because they cannot find a unity when the faithful and the unfaithful are joined. Parents who allow this to happen shall not receive communion for five years.”¹⁰ Similarly, canon 11 of the Council of Arles, France in 314 mandated, “Concerning young women among the faithful who are getting married to unbelievers, be it resolved that they be excluded from fellowship for a considerable period of time.”¹¹

The Council of Laodicia in 365 distinguished between heterodox Christians and pagans. Regarding the former, canon 10 said, “The members of the Church shall not indiscriminately marry their children to heretics.”¹² But in canon 32, the council took a stronger position against marriages to pagans, saying, “It is not lawful to make marriages with all sorts of heretics, nor to give our sons and daughters to them; but rather to take of them, if they promise to become Christian.”¹³ It appears that the council was using the same term heretics to mean both Christians not in union with the Catholic Church and non-Christians. With regard to the former, the council cautioned against marriages with heretics who were Christian, but did not forbid them. But marriages with pagans were generally forbidden, unless the threat to the faith became a benefit through the pagan’s intention to convert. In canon 14, however, the Council of Chalcedon apparently allowed marriages to non-Catholics in general, but forbade them to lower church ministers and their children; however such marriages by the children could be allowed if

¹⁰ Translation from *The Council of Elvira*, ca. 306, legalhistorysources.com/Canon%20Law/ElviraCanons.htm (accessed November 17, 2019)

¹¹ Translation from *The Council of Arles*, www.ldsinger.com/@magist/0313_Arles (accessed November 12, 2019).

¹² *The Seven Ecumenical Councils of the Undivided Church*, ed. by Henry Percival (Peabody, MS: Henrickson Publishers 1994) 129, volume 29 in *The Nicene and Post-Nicene Fathers*, 2nd series, ed. by Philip Shcall and Henry Wace (Peabody, MA: Henrickson Publishers 1994) [hereafter *The Seven Ecumenical Councils of the Undivided Church*].

¹³ *Idid.*,149.

the non-Catholics promised to convert.¹⁴ This more lenient approach seems inconsistent with the earlier local councils, but perhaps that council was simply stating the minimum universal requirement, which local churches could then make more stringent.

II. The Early Middle Ages and Differing Views

As the early Middle Ages developed, the custom arose that Christians were not to marry pagans, although it was not at first clear whether such marriages were considered invalid.¹⁵ And there did seem to be some exceptions to this principle. Thus, for example, Saint Bede recorded the situation regarding the proposed marriage of the pagan king Edwin of Northumbria to the Christian princess Aethelburh. As St. Bede records it, “The answer was that it was not lawful for a Christian maiden to be given to a heathen for fear the faith and mysteries of the heavenly King might be profaned by a union with a king who was an utter stranger to the worship of the true God.”¹⁶ However, when King Edwin promised not to interfere in Princess Aetheburh’s faith, nor that of her retainers, the marriage was allowed. Pope Boniface then wrote to King Edwin encouraging his conversion and to Princess Aetheburh encouraging her to work towards this goal. And that effort that was successful.¹⁷

Meanwhile, in the east, the Council of Trullo of 691 took a very strong view and declared that marriages between the faithful and either heretics or pagans are totally invalid.¹⁸ This provision seems to be a new one, for earlier councils had discouraged or forbidden such marriages, but not declared them invalid. The provisions of this council were not generally

¹⁴ Ibid., 278. One might reasonably ask why, if they pagan spouse intended to convert, he did not simply do so before the marriage. However, given the fact that the catechumenate was often three years, the couple would probably not want to delay the marriage until the baptism took place.

¹⁵ Bria in *The Development of Mixed Marriage Legislation*, 62-65.

¹⁶ St. Bede *Ecclesiastical History of the English People* ch. 9, ed. and trans. by Bertram Colgrave and R.A.B. Mynors (Oxford: The Clarendon Press, 1969) 163.

¹⁷ Ibid. Ch. X-XII at 167 - 178

¹⁸ “The Canons of the Council of Trullo” in *The Seven Ecumenical Councils of the Undivided Church 397*.

accepted in the West, but Pope John VIII did declare that the council's conclusions should be accepted if they do not contradict good morals.¹⁹ And in fact its rule regarding disparity of worship and mixed marriages set the precedent for establishing an impediment between Catholics and pagans; but the West would eventually develop the view that marriages between Catholics and baptized non-Catholics were illicit but valid.²⁰

III. The High Middle Ages and the Emphasis on Baptism

As of the 12th century, there was as yet no universal legislation, nor canon of an ecumenical council accepted by the West, on the point of mixed and disparity of worship marriages for the general public. However, by custom it was generally accepted that there was an impediment to both disparity of worship and mixed marriages.²¹ But the view also developed that there was a distinction between disparity of worship marriages and mixed marriage due to the common ability of Catholics and others to receive marriage as a sacrament.²²

In his *Decretum*, Bishop Burchard quoted the Council of Laodicia's prohibition on marriages to heretics, with the proviso that they were allowed if the heretic promised to become Christian.²³ As with the Council of Laodicia, he apparently used the term heretics to mean those who were not yet Christian. He does not comment on marriages to Christian heretics, but the citation to the Council of Laodicia would apparently indicate that he would discourage them. Gratian also held that Christians could not marry non-Christians for the non-Christian could not

¹⁹ "The Canons of the Council of Trullo: An Introductory Note" in *The Seven Ecumenical Councils of the Undivided Church* 357; John Beal, *Canon 72 of the Council of Trullo in Catholic Jurisprudence: An Adventure in Ecumenism*, 75 *The Jurist* (2015) [hereafter *Canon 72 of the Council of Trullo*] 35, 36.

²⁰ Beal in *Canon 72 of the Council of Trullo*, 37.

²¹ Scheck in *Mixed Marriage and Disparity of Cult*, 38.

²² John Beal, "Mixed Marriage" *The New Commentary on the Code of Canon Law*, ed. John Beal et al. (New York/Mahwah, NJ: Paulist Press, 2000) [hereafter *Mixed Marriage*] 1342.

²³ Burchard, *Decretum* 9:78 in *Decretorum libri XX: ex consiliis et orthodoxorum patrum decretis, tum etiam diversarum nationum synodis seu loci communes congesti*, ed. by Gerard Fransen and Theo Kölzer (Aalen: Scientia, 1992) (my translation).

marry in the Lord, as a Christian must.²⁴ He then cited the Council of Laodicia and Bishop Burchard to the effect that Catholics ought not to marry heretics; as with Bishop Burchard, it is not clear whether he meant that such a marriage would be invalid.²⁵ However, in a subsequent passage, dealing with the effects of error on the validity of a marriage, he said that a marriage between a Christian and a heretic is invalid if the heretic had deceived the Catholic about his heresy before the wedding; that conclusion may imply that otherwise such a marriage was valid.²⁶

This distinction between the prohibition of marriages to pagans and that for marriages to heretics was affirmed in the 13th century. Marriages to pagans were considered invalid both because of the danger to the Christian faith and because it was increasingly understood that marriage is a sacrament for Christians, and that non-believers could not share in this sacrament. By contrast, a Catholic could marry a baptized non-Catholic, although it would be unlawful due to the threat to the faith.²⁷ Thus, for example, book 4 of his *Commentary on the Sentences of Peter Lombard*, Saint Bonaventure argued that there is a diriment impediment to a marriage between a Christian and a pagan both because of the danger to the faith and because they do not share the sacraments. But in he also says that, if “a Catholic contracts with a baptized heretic” the difference in faith “impedes marriages, but does not nullify the contract,” for there is still a danger to the faith, but they can share the sacrament.²⁸ Likewise, the supplement to the *Summa Theologica* of St. Thomas Aquinas, says that there can be no valid marriage between a believer and an unbeliever both because of the lack of unity with regard to baptism and the fact that the

²⁴ Gratian, *Decretum* C. 28, q.1 d.a.c., c. 15 - 17

²⁵ Bria in *The Development of Mixed Marriage Legislation at* 66-67.

²⁶ Gratian, *Decretum*, C. 29 q. 1 pr.

²⁷ Scheck in *Mixed Marriages and Disparity of Cult* at 39-40.

²⁸ Bonaventure, *Commentary on the Sentences of Peter Lombard*, Book 4 Dist. XXXIX art. 1, q. 1 in *Opera Omnis Saint Bonaventure, Tome IV* (Florence: College Sanctus Bonaventura 1882) 832-33 (my translation).

couple could not cooperate to raise children in the faith. The Supplement does grant, however, that a marriage between a Catholic and a heretic is valid, although sinful, because they share the same baptismal status and partially share the faith.²⁹ Despite these prohibitions, where Christians and Muslims were together, especially in the Crusader States and in Spain, such marriages did take place.³⁰ And likewise, Catholics were marrying Eastern Christians, although Church authorities usually disapproved.³¹ There seems to be little evidence of dispensations for such marriages, but they took place all the same.³²

IV. The Early Modern Era: The Council of Trent, the Protestant Reformation and the Missions

As the Middle Ages came to an end, the Catholic Church experienced a great challenge in the form of the Protestant Reformation, and a great opportunity as new lands were opened to missionary activity. These two epochal transformations would bring much more contact between Catholics and non-Catholics, and with it many more opportunities for marriages between them.³³ These increased contacts, along with the Council of Trent's requirement that weddings be celebrated before clerics, would change the trajectory of the Church's approach to marriages between Catholics and non-Catholics.

The Council of Trent did not directly deal with the issue of disparity of worship or mixed marriages. However, the decree *Tametsi* required that, for validity, all marriages of Catholics

²⁹ *Summa Theologica* Supp. III q. 59 corpus and reply obj. 5, translation by Fathers of the English Dominican Province (New York: Benzinger Bros. 1948) Vol. V. 2770- 2771.

³⁰ James Brundage, *Law, Sex and Christian Society in the Middle Ages* (London: University of Chicago Press, 1987) 195-196.

³¹ *Ibid.* 196.

³² Scheck in *Mixed Marriages and Disparity of Cult*, 44.

³³ *Ibid.*, 45-48.

must be witnessed by a cleric.³⁴ Because mixed marriages were considered unlawful, clerics would not witness marriages between Catholics and non-Catholic Christians. The result was that such marriages effectively became invalid where the decree was promulgated.³⁵ Nevertheless, in Europe, Catholics did often enter such marriages, often with clerics assisting, apparently without any dispensation; and many people accepted the practice as legitimate by custom.³⁶ At first, the Popes largely tolerated this practice, although without official approval, except in the case marriages involving nobility and royalty, for in such cases the stakes were much higher. And, in those cases, the Popes sometimes granted dispensations, but usually only with great reluctance.³⁷

Eventually, the Popes began to resolve the situation with a combination two approaches, with both of them often used in the same regions. One approach was to allow, in certain areas, marriages without the assistance of clergy to be valid despite the provisions of the Council of Trent. The other approach was to give bishops the authority to grant dispensations so that priests could preside at mixed marriages. For example, Benedict XIV, on the one hand, insisted that the right of giving dispensations from form belonged only to the Holy See, and set forth conditions for such dispensations.³⁸ On the other hand, in *Matrimonia*, he gave a dispensation from canonical form to Catholics in Belgium and the Netherlands so that in these countries the

³⁴ Council of Trent, Session 24, November 11, 1563, “Decretum de Reformatione Matrimoniae” cap. 1, translation in H.J. Schroeder, *Canons and Decrees of the Council of Trent: Original Text with English Translation* (Saint Louis: B. Herder Book Co. 1941) 183 – 184.

³⁵ Scheck in *Mixed Marriages and Disparity of Cult*, 48; Beal in *Mixed Marriages 1342 – 43*; Bria in *The Development of Mixed Marriage Legislation*, 70.

³⁶ Scheck in *Mixed Marriages and Disparity of Cul*, 49-50.

³⁷ Scheck in *Mixed Marriages and Disparity of Cult*, 52 – 56; Bria in *The Development of Marriages Legislation*, 72-74.

³⁸ Benedict XVI, Encyclical *Magnae nobis* (June 29, 1748) in *Codici Iuris Canonici Fontes*, Vol. II .. 387 §5 at 148, ed. by Petri Gasparri (Rome: Typis Polyglottis, 1948) [hereafter *Fontes*].

increasingly frequent marriages between Catholics and non-Catholics would still be valid.³⁹

Popes soon extended this privilege to other countries where the majority of people were Protestants, including the British colonies that would become the United States.⁴⁰

Taking the approach of giving to bishops the authority to grant dispensations so that priests could assist at mixed marriages, Pope Pius VI allowed the bishops of Belgium to permit the assistance of priests at such weddings, partially because civil laws required clergy to assist at weddings. But he insisted on cautions that the non-Catholic party must swear that he would leave the Catholic party free to practice the faith and that the children would be raised Catholic.⁴¹ Such authority was later extended to France, Germany, Austria, and the United States with the same cautions.⁴² In addition, such marriages were to be outside of a liturgy and with little ceremony to emphasize their disfavored status.⁴³ And, on the point of keeping mixed marriages quiet, in many countries, the issue of whether to publish banns of marriage arose. On the one hand, one wanted to be assured of the validity of the marriage. On the other hand, the fact that a Catholic was marrying a non-Catholic was sometimes considered scandalous, and thus not something that the Church wished to publicize.⁴⁴

In all of these situations, the permission for mixed marriages was given only reluctantly, with the view that such marriages were most unfortunate and a threat to the faith. For example, in *Magnae nobis*, Pope Benedict XIV said, “we have always disapproved and condemned, and now also abominate and detest such nuptials unless abjuration of heresy precedes.”⁴⁵ Likewise, even in allowing dispensations for mixed marriages in Alsace in France, Pope Clement XIII in

³⁹ Benedict XVI, *Matrimonia* (Nov. 4, 1741) in *Magnum bullarium Romanum, Seu ejusdem Continuation, Tomus 26* (Luxemburgi: Sumptibus Henrici-Alberti Gosse 1752).

⁴⁰ Scheck in *Mixed Marriages and Disparity of Cult*, 36-37

⁴¹ *Ibid.*, 58-59.

⁴² *Ibid.*, 60-64.

⁴³ *Ibid.*, 64-65; Bria in *The Development of Marriage Legislation*, 82-83.

⁴⁴ Scheck at 65-58.

⁴⁵ *Fontes*, Vol II: 387 §5 at 148 (translation by Bria in *The Development of Mixed Marriage Legislation* at 79 n. 61).

the Apostolic letter *Quantopere* of 1763, wrote, “How much the Catholic Church abhors marriages between Catholics and heretics, and deeply solicitous for the eternal welfare of their children, has deterred them from joining wedlock to heretics.”⁴⁶ The Sacred Congregation for the Propagation of the Faith likewise issued numerous decrees along similar lines, allowing mixed marriages, but only reluctantly with the above stated cautions, and adding that the Catholic spouse should seek to convert the non-Catholic spouse.⁴⁷

As the Protestant Reformation made the issue of mixed marriages much more common, the missionary work of the Church and the explorations of the European powers made the issue of marriages between Catholics and non-Christians a much more prominent issue. For, increasingly Catholics were living in areas that were dominated by those of other faiths. In response, the Congregation for the Propagation of the Faith issued instructions in 1637 and 1760, along with numerous letters to specific missionaries, allowing bishops or even mission superiors to give dispensations from the impediment of disparity of worship and thus allow clerics to assist at wedding between Catholics and non-Christians. As with mixed marriages, before any dispensation, both spouses had to promise that there would be no danger to the faith of the Catholic party and that the children would be raised Catholic.⁴⁸ In some cases, the letters also said that the Catholic party must promise to work for the conversion of the non-Catholic.⁴⁹

⁴⁶ *Fontes* Vol. II: 460 §1 at 607 (translation by Bria in *The Development of Mixed Marriage Legislation* at 81 n. 64.

⁴⁷ Bria outlines these instructions in *The Development of Mixed Marriage Legislation* at 101 – 120.

⁴⁸ Bria in *The Development of Mixed Marriage Legislation*, 120-122

⁴⁹ Bria in *The Development of Mixed Marriage Legislation*, 122-123.

V. The Early 20th Century and the 1917 Code

Shortly before the 1917 Code, the Sacred Congregation of the Council, under Pope Pius X, issued the 1907 decree *Ne Temere*, which among other things made universal the requirement that a marriage involving a Catholic must be witnessed by an authorized priest, except in Germany, whose situation was provided for elsewhere. Before that time, canonical form had not required for validity in some countries because either: (1) *Temetsi* had not been promulgated in the country (e.g., Ireland); or (2) as stated before, the Popes had waived the requirement for specific countries.⁵⁰ With the decree *Ne Temere*, that approach of recognizing the validity of marriages without canonical form was no longer used except in Germany; instead, the only way for a Catholic to marry a non-Catholic validly was to receive a dispensation for a cleric to witness the wedding, or to receive an individual dispensation from form from the Holy See itself.

These developments were then brought together in the 1917 Code, which addressed mixed and disparity of worship marriages in canons 1060-1064 and 1070-1071.⁵¹ Canon 1060 began by sharply criticizing mixed marriages. It then said that there is an impeding impediment to them, making the marriage of a Catholic and non-Catholic Christian unlawful, but not per se invalid. However, the canon said that such a marriage is invalid if it endangers the faith of the Catholic party. Furthermore, due to the requirement of canonical form, a dispensation from this impediment was effectively required for the validity of such a marriage involving a Catholic, for otherwise a cleric would not assist. Bishops could dispense from this impediment, but only after an assurance that there was a grave cause to do so, that the non-

⁵⁰ John McNicholas, *The New Legislation on Engagements and Marriage: Commentary on the Decree "Ne Temere"* (Philadelphia: Dolphin Press, 1908)[hereafter *New Legislation Ne Temere*] 50-55.

⁵¹ *Codex Juris Canonici Pii X Pontificis Maximi issu digestus Benedicti Papae XV auctoritate promulgates* (Rome: Typis Polyglottis Vaticanis 1917).

Catholic party promised to remove all danger to the faith to the Catholic, and that both parties promised that the children would be raised Catholic (c. 1061). Furthermore, the Catholic party had the obligation to work prudently for the conversion of the non-Catholic party (c. 1062). Canon 1064 1^o also said that pastors should discourage such weddings before even asking for the dispensation. Canon 1070 described anew the diriment impediment of disparity of worship; and canon 1071 said that a dispensation from this impediment required the same cautions as the dispensation from the impediment of mixed marriage.

There was one crucial clarification, however. Canon 1070 §1 of the 1917 code said that the impediment of disparity of cult applies only to a wedding between those baptized or received into the Catholic Church, not to others. Before that time, many had believed that, due to the fundamental sacramental inequality, there was an impediment to any marriage between all the baptized and unbaptized.⁵² Here, the Church was clarifying that the impediment is an ecclesiastical law imposed to protect the faith of the Catholic spouse and the children and to discourage such unequal marriages.⁵³

VI. The Vatican II Council and the 1983 Code

Like the Council of Trent, the Vatican II Council did not directly address the issue of mixed or disparity of worship marriages.⁵⁴ However, the decree *Unitatis Redintegratio* on Ecumenism and declaration *Nostrae Aetate* on non-Christian religions presented a more positive view of non-Catholic faiths. And the declaration *Humanae Dignitatis* on religious freedom

⁵² E.g., McNicholas in *New Legislation Ne Temere*, 50.

⁵³ Scheck in *Mixed Marriage and Disparity of Cult*, 98-99.

⁵⁴ There is one exception to that rule. Section 18 of the decree *Orientalium Ecclesiarum* on the Eastern Churches of the Eastern Rite did provide that, when an Eastern Catholic marries a baptized Eastern non-Catholic before a sacred minister even of the eastern non-Catholic church, canonical form is required for liceity only. Vatican II, decree *Orientalium Ecclesiarum*, November 21, 1964: AAS 57 (1965) 76-85. That provision is reflected in canon 1127 §1 of the 1983 code.

emphasized freedom of conscience and the right of each person to decide his religion without coercion or pressure. One result was a less negative view of mixed marriages and disparity of worship marriages, and less emphasis on the duty of a Catholic spouse to try to convert a non-Catholic spouse.⁵⁵ Furthermore, even during the Council Pope St. Paul VI in his Apostolic Letter *Pastorale Munus*, extended to local ordinaries the power to dispense from the impediments of mixed marriage and disparity of worship.⁵⁶

In 1966, the Congregation for the Doctrine of the Faith issued its decree entitled *Matrimonii sacramentum*, which revised instructions regarding mixed marriages, deemphasized the cautions and negative descriptions of mixed and disparity of cult weddings, and encouraged a liturgical celebration of them.⁵⁷ The introduction balanced a recognition of “the difficulties and dangers involved in marrying a non-Catholic Christians and, much more so, a non-Christian” with the view that *Unitatis Redintegratio* “suggest[s] a mitigation of the rigor of the existing discipline on mixed marriages.”⁵⁸ It concluded with a comment that “the thought and intention behind these regulations is . . . to meet the needs of the faithful in our day and to promote cordial relations between Catholics and non-Catholics.”⁵⁹

Pope St. Paul VI followed up this instruction with his 1970 Apostolic Letter *Matrimonia mixta*.⁶⁰ In that letter he recognized the increasing amount of contacts between Catholics and non-Catholics, whether baptized or not, and the increasing number of weddings between them as well. He still cautioned against them, saying that they introduced a division within the family

⁵⁵ See Beal in *Mixed Marriages*, 1343; John McAreavey, “Mixed Marriages: Conversations in Theology, Ecumenism, Canon Law and Pastoral Practice” *Ecclesiastical Law Journal* 8, No. 37 (July 2005) [hereafter *Mixed Marriages: Conversations*] 121, 124-125.

⁵⁶ *Pastorale munus* 19-20, AAS 56 (1964) 8.

⁵⁷ AAS 58 (1966) 235 – 238, translation in *Vatican Council II: The Conciliar and Post Conciliar Documents: Study Edition* Vol. 2 ed. by Austin Flannery Northport, NY: Costello Publishing Company, 1987) [hereafter Flannery, Vatican II] 447.

⁵⁸ 58 AAS (1966) 235 – 236 (translated in Flannery, *Vatican II* at 475).

⁵⁹ 58 AAS (1966) 238 (translated in Flannery, *Vatican II* at 478.)

⁶⁰ AAS 62 (1970) 257 – 263 (translated in Flannery, *Vatican II* 508).

itself. However, in that letter, he said that, to a large degree, instructions for mixed marriages must be local because the issues vary from place to place. And so he allowed the Bishop's Conferences to determine how the requisite promises (i.e. of adhering to the faith and raising children Catholic) were to be made. He also allowed ordinaries to dispense from canonical form for mixed and disparity of worship weddings "when there are serious difficulties in observing it" as long as there was a public celebration of the marriage. In the other direction, he allowed mixed marriages to be celebrated within a Mass with the local ordinary's consent if "the circumstances justify it."⁶¹

The 1983 Code basically adopted the provisions of *Matrimonia mixta*, and eliminated the negative comments about mixed marriages and disparity of cult marriages that were present in the 1917 Code.⁶² However, canon 1124 no longer describes mixed marriages as an impediment requiring a dispensation, but rather as a situation requiring permission. The change reflects a more positive view of mixed marriages than before, although the requirement for permission and conditions for it continue the idea that there are cautions on this issue. As Fr. Beal points out, "By abrogating mixed religion as an impediment and requiring only permission for Catholics to enter into mixed marriages, the revised code has taken a decidedly more positive view of mixed marriages than did the previous code and the tradition underlying it."⁶³ Canon 1086 still describes disparity of worship as a diriment impediment, and thus continues the greater cautions regarding them, although without any negative language.

⁶¹ Ibid, 261-262 (translated in *Flannery, Vatican II*, 512-513). Between *Matrimonia mixta* and the 1983 Code, there were more formal ecumenical dialogues between the Catholic Church and representative from the Orthodox Churches and various Protestant Communion. These dialogues led to at least four formal ecumenical statements on mixed marriages, with the Orthodox Churches, with the Anglican Communion, with the Lutheran Work Federation and World Alliance of Reformed Churches, and with the various Methodist groups. The Most Rev. John McAreavey, Bishop of Dublin, outlines these dialogues in *Mixed Marriages: Conversations*, at 137.

⁶² Beal in *Mixed Marriages*, 1343.

⁶³ Ibid.

CONCLUSION

The Church has developed her view of mixed and disparity of worship marriages in a way that shows both continuity and progress. From the beginning, the Church has recognized that there are very serious issues with marriages between Catholics and non-Catholics insofar as there is a lack of unity of the faith and a risk to the Catholic spouse's faith as well as the Catholic upbringing of children. In addition, the understanding of marriage as a sacrament increased in the Middle Ages and with it the concern that marriages between Catholics and the unbaptized would be lessened to a lower level than that of a sacrament. As a result, the Church generally forbade such weddings. However, as with the Council of Chalcedon, times when the non-Christian was likely to convert, and the wedding of King Edwin and Princess Aethelburh, there were exceptions. These exceptions became more common in the modern era, when contacts between Catholics and others increased, and the Popes made concessions to the practicalities of the resulting marriages, but also discouraging such marriages and insisting on cautions.

The current Code does not ignore these cautions and concerns, and in fact requires formal permissions or dispensations, along with mandated promises, to deal with them. Canon 1128 recognizes as well the need for special pastoral care in these situations. But the Church has also increasingly recognizes that there is a goodness to non-Catholic Christian practices and to non-Christians religions, as well as the importance people's to marry partners whom they discern are best. The increased understanding has led to a greater acceptance of the legitimacy and even goodness of mixed and disparity of worship marriages, along with the need to be careful. Thus, here as elsewhere, the Church has maintained her historic insistence on the importance of unity

and perseverance in the faith, but added an understanding of individual circumstances and dialogue with those who disagree.