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The Upbringing of Offspring in Mixed Marriages in a Historical Perspective

Abstract: The concern for the upbringing of children in the marriages of Christians with followers of other religions or pagans, and then Catholics with non-Catholics, was from the very beginning a concern of the church community. This issue is discussed in the present article, in which the author focuses his attention on foundations of the regulations rather than on their legal aspect. The conducted analyses indicate that there has been a significant shift from the objective protection of faith to the subjective expression of the personal character of the marriage relationship and the related rights and obligations resulting from the free-given grace of belonging to Christ.

Keywords: mixed marriages, parents, offspring, upbringing, rights, obligations

1. Introduction

In the history of ecclesiastical legislation concerning mixed marriages and raising children, the most significant change is found in *motu proprio* of Paul VI *Matrimonia mixta*¹ and the earlier Instruction of the Congregation for the Doctrine of the Faith *Matrimonii sacramentum*.² Both documents are a legal consequence of the teaching of the Second Vatican

¹ PAUL VI: *Apostolic Letter in the Form of Motu Proprio “Matrimonia mixta”* [1.10.1970].

² CONGREGATION FOR THE DOCTRINE OF THE FAITH: *Instruction on Mixed Marriages “Matrimonii sacramentum”* [18.03.1966].

Council, translating conciliar ecclesiology into canonical language,³ especially in the approach to understanding the Church of Christ,⁴ to ecumenical issues⁵ and to the issue of religious freedom.⁶ From the three conciliar documents a triad emerges, in the light of which we can read the current legal solution concerning entering into mixed marriages, which still — according to Pope Francis — can be described as “complex situations.”⁷ The above-mentioned context of today’s theology concerning mixed marriages and consequently, existing legal solutions may be cursorily summarized in the following statements: 1) in the non-Catholic Christian denominations there are “many elements of sanctification and of truth”⁸; 2) “man’s response to God in faith must be free” and he is bound “to obey his conscience”¹⁰; 3) “anything wrought by the grace of the Holy Spirit in the hearts of our separated brethren can be a help to our own edification.”¹¹ Further papal documents, especially *Familiaris consortio*¹² i *Amoris laetitia*, confirm and reinforce the teaching of the Council, but are also symptoms of its development in detailed and difficult issues. Pope Francis points out that mixed marriages should be appreciated and developed for their intrinsic value as well as their contribution to the ecumenical movement.¹³

There has been a palpable advance in current theology and legal regulations concerning mixed marriages and bringing up children in them from the point of view of Catholic theology. As theological awareness and knowledge of Revelation develop, as well as through the ecumenical dialogue, in which the other side’s reasons are duly acknowledged, solutions to specific issues are sought by constructively taking into account the other side’s thoughts in one’s own theological argumentation, reception and shaping of consensus.¹⁴ Today’s solutions are not only a testimony to theological discrepancies, but also to the difficult way of arriving at

³ JOHN PAUL II: *Apostolic Constitution “Sacrae disciplinae leges”* [25.01.1983].

⁴ VATICAN COUNCIL II: *Dogmatic Constitution on the Church “Lumen gentium”* [21.11.1964].

⁵ VATICAN COUNCIL II: *Decree on Ecumenism “Unitatis redintegratio”* [21.11.1964].

⁶ VATICAN COUNCIL II: *Declaration on Religious Freedom “Dignitatis humane”* [7.12.1965].

⁷ FRANCIS: *Post-Synodal Apostolic Exhortation “Amoris laetitia”* [19.03.2016], n. 247.

⁸ *Lumen gentium*, n. 8.

⁹ *Dignitatis humane*, n. 9.

¹⁰ *Ibidem*, n. 11.

¹¹ *Unitatis redintegratio*, n. 4.

¹² JOHN PAUL II: *Apostolic Exhortation “Familiaris consortio”* [22.11.1981].

¹³ *Amoris laetitia*, n. 247.

¹⁴ W. KASPER: *Kościół katolicki. Istota, rzeczywistość, posłannictwo*. Kraków 2012, p. 541.

the recognition of the arguments of the other party. To a large extent, the environment for finding some solutions are joint initiatives undertaken by Christians of different denominations. These include their marriages. They are a privileged place for ecumenical dialogue, although this dialogue is not the reason for entering into them. The situation in which Christians of different faiths find themselves poses challenges regarding the Christian identity of the family and the upbringing of children.¹⁵ One should take into account the arguments of the other party and, at the same time, be in harmony with one's own faith response. A positive aspect and, at the same time, a stimulus mobilizing to common concern for the Christian upbringing of children is the rejection of the centuries-old practice of forbidding mixed marriages and punishing the Catholic side for failing to fulfill obligations resulting, for example, for not bringing up children in the Catholic faith. This historical argument will become the subject of this study, in particular the issue of raising offspring in mixed marriages. The history of marriages concluded by the followers of Christ, first with pagans and apostates from the faith, through their ties with Christians belonging to the Orthodox Church or Protestant denominations, had many faces. Diachronic, concise, but at the same time essential, presentation of mainly legal provisions shall allow us to understand their foundations and reasons, as well as their relations to those currently in force.

2. Antiquity

The oldest synods of the Church contain provisions in the formulated canons concerning the prohibition of Christians from entering into marriages with followers of other religions. We find dispositions in this matter in the canons of the first synod of the Spanish Church in the Council of Elvira,¹⁶ which dealt with matters of ecclesiastical discipline. The legal dispositions of this synod contained regulations concerning marriages between Christian women and pagans. In canon 15 this prohibition may have been drafted because of a certain practice that led to such marriages due to the number of Christian women significantly exceeding the number of Christian men at the time. So, the small number of Christian

¹⁵ *Amoris laetitia*, n. 248.

¹⁶ I use *concilium* in its original meaning as the Latin term introduced by Tertullian for the Greek term for the assembly of bishops *synodos*. E. SASTRE SANTOS: *Storia dei Sistemi di Diritto Canonico*. Roma 2012, p. 69.

men was supposed to justify marrying men who were pagans. We read in the said canon that it is forbidden to do so because it risks women falling into “spiritual adultery.” In common opinion, a normative provision is read as a ban on marrying pagans, which corresponded with the practice of the Church referring to the provisions of the Old and New Testament.¹⁷ However, there is no lack of opinion that the prohibition expressed in the canon should not be treated as absolute. Canon 15 confirms that Christian women could marry pagans when there were many more of them than Christian men.¹⁸ This was the situation of the Church in Spain at that time, similar to that of other Churches, where marriages between Christians and pagans were not uncommon.¹⁹ The correctness of this opinion can be confirmed by the fact that the prohibition concerns only the reason justifying the choice of marriage with pagans and the fact that there is less possibility of the loss of faith than in the case of marriages with heretics or Jews. No penalty was attached to such a ban. For this reason, the conciliar decision should be understood more as a recommendation than a prohibition.²⁰

In retrospect, reading the provisions of the canon without a historical context and without the underlying belief in Christian marriage may lead to ambiguous conclusions. Considerations can be made as to whether the prohibition relates to marriage (it could have been expressed unequivocally) or only to the justification of contracting a marriage, without taking into account other motives. The wording of the canon: *minime in matrimonium dandae sunt*²¹ speaks in favour of the latter solution, although there is no lack of opinion that the expression *minime* has more force than the prohibition itself due to the greater number of marriages between Christians and pagans than heretics or Jews, as discussed in the following canons.²² The next two canons of this synod (canons 16—17) leave no ambiguity. They clarify that Christian girls may not be married off to heretics who do not wish to enter the Catholic Church (can. 16). The reason for this provision is the lack of communion between the faithful and non-believers. The prohibition applies only to parents who marry

¹⁷ F. X. WERNZ, P. VIDAL: *Ius canonicum ad Codicis normam exactum*. Vol. 5: *Ius Matrimoniale*. Romae 1928, p. 301.

¹⁸ J. SYRYJCZYK: “Troska Kościoła o katolickie wychowanie dzieci w kanonicznym prawie karnym.” *Prawo Kanoniczne* 30/3—4 (1987), pp. 208—209.

¹⁹ *Ibidem*, pp. 208—209.

²⁰ L. ODROBINA: “Ancora sul divieto dei matrimoni misti a Concilio di Elwira.” In: *I concili della cristianità occidentale: secoli III-V*. Roma 2002, p. 583.

²¹ COUNCIL OF ELVIRA, can. 15. *Synody i kolekcje praw*. Vol. 1: *Dokumenty synodów od 50 do 381 roku*. Eds. A. BARON, H. PIETRAS. Kraków 2006, p. 52.

²² L. ODROBINA: “Ancora sul divieto dei matrimoni misti a Concilio di Elwira....” p. 584.

off their daughters, not to the marriage itself. For this reason, only the parents are punished with deprivation of communion for a period of five years. However, this punishment would have applied to their entire lives if they had given their daughters away as wives to pagan priests. The prohibitions against marrying non-Christians also lead to conclusions about the upbringing of children in such relationships. There was a danger of their upbringing outside the Christian faith.

At the subsequent local synods in Laodicea (the second half of the 4th century)²³ and in Agde (506), the ban on marrying Christians outside the Church community was maintained but no sanction was attached to the ban. The Council of Laodicea decided that it was possible to marry heretics on condition that they made a vow to convert to the Christian faith. The ban on entering into such marriages applied to all, irrespective of gender, and to parents giving away their children (sons and daughters) to marry. The Council of Agde in canon 67 confirmed the decree of canon 31 of Laodicea Council.²⁴

The issue of offspring born of relationships of Christians and pagans, heretics, or Jews, if the latter were formed despite the prohibitions, was first raised at the Council of Chalcedon IV (451). After affirming in canon 14 the ban on marriages of lectors and cantors with heretics, Jews and pagans, unless they promise to accept the true faith, the council decided that after marriage, children previously baptized by heretics should be admitted to the community of the Catholic Church. On the other hand, infants not yet baptized cannot be baptized by heretics.²⁵ The prohibitions expressed in this canon have been covered by indefinite canonical penalties. However, they do not apply to people who marry against the prohibitions expressed. They relate to baptism and the education of children in a non-Christian community. Thus, the order to raise a child in Christianity was imposed on Catholic parents by an express prohibitions. This order was further strengthened by a sanction for actions inconsistent with it. In the opinion of canonists, the upbringing of children in a non-Christian religion was qualified as complicity in the crime of heresy, because in this way heretical doctrines conducive to heresy were promoted.²⁶

²³ COUNCIL OF LAODICEA, can. 10, 31. *Synody i kolekcje praw*. Vol. 4: *Dokumenty synodów od 381 do 431 roku*. Eds. A. BARON, H. PIETRAS. Kraków 2010, pp. 112, 115.

²⁴ COUNCIL OF AGDE, can. 67. *Synody i kolekcje praw*. T. 8, *Dokumenty synodów od 506 do 553 roku*. Eds. A. BARON, H. PIETRAS. Kraków 2014, p. 21.

²⁵ COUNCIL OF CHALCEDON, can. 14. *Dokumenty Soborów Powszechnych*. T. 1 (325—787). Eds. A. BARON, H. PIETRAS. Kraków 2002, p. 239.

²⁶ M. CONTE A CORONATA: *Institutiones Iuris Canonici ad usum utriusque cleri et scholarum*. Vol. 4: *De Delictis et Poenis*. Romae 1955, n. 1878.

In her first centuries, the Church did not prohibit in an absolute way the marriage of Christians with followers of other religions or with heretics or pagans, but the prohibition was expressed by introducing various commands, it showed the value of the gift of faith and the obligation to transmit it through the Christian education of children. Already the synod in Elvira underlined the reasons behind these prohibitions: 1) danger of losing faith; 2) lack of community between believers and the unfaithful. It is worth noting that the prohibition of baptism of children born of such marriages by heretics is one of the conditions, apart from the conversion of a spouse to the Catholic faith, of concluding a marriage with a person from outside the Christian community. The two conditions constitute the beginning of the present-day warranties required before marriage between a Catholic and an non-Catholic or non-Christian.²⁷

3. Middle Ages

Formed in the first centuries, the constant practice of banning Christians from marrying non-believers, persons of other religions, schismatics or heretics was present in subsequent decisions of local synods in the Middle Ages (the Council of Orléan, 533 in can. 19; Orlean, 538 in can. 13; IV Council of Toledo, 633 in can. 63; the Council of Trullo, 692 in can. 72).²⁸ The conciliar decisions of the Middle Ages brought new normative solutions to the upbringing of children in mixed marriages between Christians and Jews or non-Catholics. The Synod of Toledo (633) decided in Chapter 63 (*Capitulum* 63) that children in such unions should be brought up in the Christian way (*christianam sequantur religionem*), regardless of whether the Christian side is male or female. At the same time, a failure to comply with this order was punishable by the sanction of separation if, after a prior warning by the bishop, the Christian side still does not want to comply with it.²⁹ This canon was fully incorporated into Gratian's Decree.³⁰

²⁷ U. NAVARETTE: "Matrimoni misti: conflitto fra diritto naturale e teologia?" *Quaderni di Diritto Ecclesiale* 5/3 (1992), p. 270.

²⁸ G. DZIERŻON: *Ewolucja doktryny oraz dyscypliny dotyczących przeszkody różności religii w kanonicznym porządku prawnym...*, pp. 43—50.

²⁹ IV COUNCIL OF TOLEDO, cap. 63. JOANNES DOMINICUS MANSI: *Sacrorum conciliorum nova et amplissima collectio*. Vol. 10. Florentiae 1764, p. 634.

³⁰ C.28 q.1 c.10.

In the formulation of the canon, one can see preferences relating to the upbringing of a child in the Christian faith, which is placed before the parents' obligation to pass on the faith. This is due to the decision that a child born of a Christian's relationship with a person of another faith should follow the mother's path, as long as she is a Christian. There is no such relationship in the case of a Christian father. When the mother is not a Christian, the child is to follow not the path of the father, but the path of Christian faith as if the role of the father was not to educate. Following the path of faith may mean that someone other than the father may take up Christian education. One can notice here a reference to canon 1 of the Synod of Hippo (393), which forbids the emancipation (release) of a son from his father's authority by a bishop or clergyman, adding that it is possible, however, when his way of life and customs are considered good. The reason for removing a son from his father's power is, on the one hand, his good life, which he can continue himself, but on the other hand, there is a fear of causing harm to the bishop or clergyman in the event of his indecent behaviour. In such situations, it is better to remove the son from the father's authority in order to protect his office in this way. The protection of the bishop and clergyman as a father cannot be damaged by the misbehaviour of their son.³¹

Apart from the formulation of the Fourth Council of Toledo, the issue concerning the Christian education of children is not discussed in other conciliar decisions. The main attention is focused on the issue of the possibility of contracting mixed marriages and the legal effects they cause. It was during this period, especially thanks to Hugh of Pisa, that marital obstacles in today's sense were distinguished as *disparitas cultus and mixta religio*.³² This distinction was intended to eliminate mixed marriages from church communities. Additionally, however, it was intended to punish Catholics who married non-Catholics. The provisions of the Council of Toledo gave rise to the claim that by the eliminating approach to such marriages, the non-Catholic upbringing of offspring born in non-Catholic marriages was also combated.³³ The Church's approach to raising children was based more on the child's direct relationship with faith than with the parents. In later centuries, such an attitude was transferred to the church practice (e.g. the evangelization of America, church schools with the upbringing of children of the indigenous people) of taking their

³¹ SYNOD OF HIPPO, can. 1, in: *Synody i kolekcje praw*. Vol. 4: *Dokumenty synodów od 381 do 431 roku*. Eds. A. BARON, H. PIETRAS. Kraków 2010, p. 61.

³² U. NOWICKA: "Przeszkoda różności religii." In: *Przeszkody małżeńskie w prawie kanonicznym*. Ed. W. GÓRALSKI. Warszawa 2016, pp. 209—210.

³³ J. SYRYJCZYK: "Troska Kościoła o katolickie wychowanie dzieci w kanonicznym prawie karnym..." pp. 210—211.

children away from their parents in order to bring them up properly in faith outside the family environment.

Medieval legal practice relating to the rearing of offspring, along with the penalties imposed on those abusing to do so, reflected earlier thinking about favouring or advocating heresy. Support for heresy was threatened by Pope Alexander IV with the penalty of deprivation of church funeral and excommunication. In addition, the accomplices (parents) and their offspring up to the second generation were punished with irregularities in receiving and having benefices in church and public offices.³⁴ The criminal responsibility for the upbringing of children in a non-Christian and thus heretical religion rested with the parents and children. The same applied to the situation of bringing up children in the pagan or Judaic religion, which was treated as complicity in the crime of apostasy from faith.³⁵ The practice of imposing penalties for complicity in heresy was confirmed by the Fourth Lateran Synod (1215). It concerned parents giving their children up for upbringing in a non-Catholic religion, for which they could be excommunicated *latae sententiae*.³⁶

4. Modern times

Undoubtedly, Protestantism, established at the beginning of the 16th century, had a great influence on the issue of mixed marriages and the upbringing of children. The emergence of a new religion in such a large part of Catholic realm contributed to marriages between Catholics and Protestants. The documents of the Council of Trent convened in response to the Reformation do not state that it dealt with the problem of mixed marriages. Also, the question of the obstacle of *disparitas cultus* was not elaborated on despite the achievements of earlier canon studies.³⁷

The new practice of mixed marriages prompted the provisions of provincial synods (France, Belgium, Germany, Poland) and those reminded by

³⁴ VI, V.2.2.

³⁵ VI, V.2.13.

³⁶ IV LATERAN COUNCIL, can. 3. *Dokumenty Soborów Powszechnych*. Vol. 2 (69—1312). Eds. A. BARON, H. PIETRAS. Kraków 2002, pp. 231—235.

³⁷ G. DZIERŻON: *Ewolucja doktryny oraz dyscypliny dotyczących przeszkody różności religii w kanonicznym porządku prawnym...*, pp. 81—82. The author adds that in the times of Counter-Reformation, views confirming the legal validity of this obstacle under the legal custom were dominant (p. 84).

the Holy See, which prohibited such marriages. The conclusion of mixed marriages was possible only after obtaining the papal dispensation, which popes issued rarely and only for very serious reasons, especially when it was related to the need to grant dispensation from a coexisting obstacle. Until the 18th century, the popes delegated such a possibility even less frequently than they gave dispensations themselves.³⁸ However, the condition for requesting a dispensation, as indicated by Benedict XIV in the Encyclical *Magne nobis* of 1748, was the requirement of conversion of the non-Catholic party, which, however, in Germany in the 18th and 19th centuries gave way to the widespread practice of concluding mixed marriages without fulfilling the condition of conversion. A characteristic feature of papal documents of that period in the matter of mixed marriages is the dependence of the dispensation for their conclusion on the submitted guarantees, including those relating to children. The Catholic side had to undertake a commitment to keep their faith and raise their children in the Catholic faith. A non-Catholic was required to make a commitment that he or she would allow his spouse to fulfill all religious practices and raise all children in the Catholic religion.³⁹

It was only Pope Pius IX who resumed the issues relating to mixed marriages and mitigating the requirements, but they did not meet with a response at the First Vatican Council.⁴⁰ The earlier legal solutions related to the obligation to impose penalties for complicity in the crime of apostasy of heresy remained in force. Such accomplices were parents who gave their children away to be brought up in the non-Catholic faith. Pius IX instituted the punishment of *latae sententiae* reserved to the pope *speciali modo*.⁴¹

Raising children in mixed marriages in the official documents of the Holy See of modern times appeared in the context of their baptism in the Catholic religion and the preservation of faith. The educational issue itself was not present. The child's faith was related to the faith of the Catholic parent and to the obligation imposed on him to raise the child in his own faith.

All papal exhortations addressed to the Catholic side apply only indirectly to children in mixed marriages. Characteristic for this period is also a clean criminal record for Catholics entering into a mixed marriage after

³⁸ F. X. WERNZ, P. VIDAL: *Ius canonicum ad Codicis normam exactum...*, p. 184.

³⁹ BENEDICT XIV: *Encyclical Letter "Magne nobis"* [29.06.1748]. In: *Codicis Iuris Canonici Fontes*. Vol. 2. Ed. P. GASPARI. Romae 1948, n. 387. BENEDICT XIV: *Apostolic Letter "Ad tuas manus"* [8.08.1748]. In: *Codicis Iuris Canonici Fontes*. Vol. 2...., n. 389.

⁴⁰ F. X. WERNZ, P. VIDAL: *Ius canonicum ad Codicis normam exactum...*, p. 185.

⁴¹ PIUS IX: *Apostolic Constitution "Apostolicae sedis"* [12.10.1869]. In: *Codicis Iuris Canonici Fontes*. Vol. 3. Ed. P. GASPARI. Romae 1933, n. 552.

obtaining a dispensation, if the children were baptized and brought up in the Catholic manner.

5. Contemporary times

The fall of ancien régime influenced the structural changes of European society as well as issues related to entering into marriage after the introduction of civil marriages to the state systems. Like Protestantism, the new possibilities of getting married, the practice of which were increasing, required a reaction from the Holy See. It is also the period when the first legal regulations protecting children's rights appear.⁴² The issue that required the Church's response concerned situations where state legislation stipulated that children in mixed marriages were to be brought up in the religion of the father or in the religion that the father would choose for his children. Pope Pius VIII responded to this problem in the Apostolic Letter *Litteris altero*.⁴³ He emphasized that the norms of state law are contrary to canon law. At the same time, he called on Catholics marrying non-Catholics to observe the norms of the Church. He recalled that the Church had never dispensed Catholics from the obligation to raise children in the Catholic faith and from the absolute obligation of the warranty on the Catholic side to raise all children in the Catholic faith. He also asked priests to remind the parties of their obligations regarding the Catholic upbringing of children before entering into marriage. He also added that priests are forbidden to celebrate such a relationship if the parties do not want to respect the requirements of church law, and the Catholic side should be censured in the event of a refusal to provide a warranty.

Another issue to which the pope responded with his intervention concerned the apparent consent to the Catholic upbringing of children by persons wishing to marry. This is because apparent consent was given in

⁴² The first attempts to protect children's rights in the forum of state legislation appeared in Great Britain in 1819. Robert Owen, an activist of the socialist movement and a pioneer of cooperatives, proposed a ban on the employment of young children in mines, factories and agriculture, which was passed in 1908 Children Act. Subsequent pieces of legislation to protect children appeared in Hungary (1901), France (1904), and Belgium (1912). In their content, they referred to social assistance for children, which was philanthropic in nature. T. GAŁKOWSKI: "The right of the child to life and to preserve his or her identity." *Ecumeny and Law* 3 (2015), pp. 229—230.

⁴³ Pius VIII: *Apostolic Letter "Litteris altero"* [25.03.1830]. In: *Codicis Iuris Canonici Fontes*. Vol. 2. Ed. P. GASPARI. Romae 1948, n. 482.

order to obtain a dispensation for marriage. In fact, however, the parents agreed among themselves that at least some, if not all, of their children would be raised outside the Catholic Church. Recognizing such marriages as validly yet indecently contracted, the Pope asked the priests again to admonish the Catholic side in such situations and persuade it to undertake an appropriate penance. The duties of priests also include reminding about the Catholic upbringing of children. The papal letter clearly shows that the guarantee of bringing up Catholic children in mixed marriages rested more on the priests, who were obliged to care for the preservation of the Catholic faith of children in mixed marriages, than on the parents themselves.⁴⁴ The commitment of the clergy and the threat of punishments was of greater value than the conscious testimony of the faith and rights of Catholic parents. It is hard not to get the impression that this situation resembles the rules of raising children under the penalty that could be imposed on the educator for failing to fulfill the obligation imposed on him.

6. The 1917 Code of Canon Law

In the pre-code legislation, the Church's concern for the Catholic upbringing of children in a mixed marriage, for which a dispensation was required, depending on the occurrence of serious reasons and providing a warranty, was expressed in imposing an obligation on the Catholic side to maintain their own faith and the children's faith. From the other side, which was considered heretical, commitments were required that would allow for the fulfillment of religious practices and the upbringing of all children in the Catholic religion. The centuries-old practice, constantly reminded in papal documents, was the basis for legal regulations in the 1917 Code of Canon Law. In the regulations of the Code, however, one can notice a significant change compared to the disposition of Pope Pius VIII. The guarantee of the Catholic upbringing of offspring was the pastoral influence on the Catholic side to induce them to fulfill the obligation assumed when concluding the sacrament. Marriages were forbidden if the parties did not want to provide a guarantee regarding the Catholic upbringing of their offspring, and the Catholic side was at risk of incurring censorship. In the Code of 1917, the emphasis of responsibility for

⁴⁴ J. SYRYJCZYK: "Troska Kościoła o katolickie wychowanie dzieci w kanonicznym prawie karnym...", p. 214.

the upbringing of children in the Catholic way was placed on the positive formulation of the obligation incumbent on parents (can. 1372 §2).⁴⁵

The first purpose of marriage, as expressed in canon 1113 § 1 was not only the birth, but also the rearing of offspring. The legislator explained that this upbringing is done by preparing a child for independent private and public life in the church and civil community. As a consequence, this obligation resulted in specific obligations, such as concern for the religious, moral, physical, and civic education of the offspring. The Code indicates the means by which the religious education of a child is carried out. These included: the baptism of a child (can. 770), teaching the principles of catechism (can. 1335) and education in Catholic or other schools with the consent of the local ordinary (can. 1372—1374). His prerogatives included the assessment of the circumstances of this choice of school and the provision of measures against deviation from the faith. The obligation of Catholic upbringing of children rested on Catholic parents, but it also applied to them in situations of entering into marriage with non-Catholics.

In the Code of 1917, the principle prohibiting mixed marriages (*severissime Ecclesia prohibet*) was maintained. The prohibition of entering into such marriages resulted from the fact that they could often lead to the loss of faith or religious indifference, and the offspring could be at risk of baptism and being brought up outside the Catholic Church (can. 1061 §1, 2^o). An additional motive was the possibility of illegal participation of a Catholic in sacred things (*communicatio in sacris*) in the non-Catholic religion or the admission of non-Catholics to sacraments in the Catholic Church. It was only possible to grant dispensation for such a marriage if the Church recognized that the obstacle did not arise from God's law.

The justification for granting the dispensation was to achieve moral certainty that the Catholic side and the offspring would not be in danger of losing their faith⁴⁶ from a mixed marriage. A surety measure in the form of warranty was required prior to entering into marriage. It concerned the non-Catholic side and was supposed to ensure that the Catholic spouse would not be in danger of losing his or her faith. Both parties were obliged to make a pledge regarding Catholic baptism and the upbringing of children (can. 1061 §1, 2^o). An additional measure securing the Catholic upbringing of offspring in mixed marriages were the penalties of *latae sententiae* excommunication provided for failure to comply

⁴⁵ Ibidem.

⁴⁶ F. BĄCZKOWICZ, J. BARON, W. STAWINOĞA: *Prawo kanoniczne. Podręcznik dla duchowieństwa*. Vol. 2. Opole 1958, p. 210.

with God's obligation resulting from the law. They were subordinate to Catholics who entered into marriage with an explicit or tacit agreement that all or some of the children would be brought up outside the Catholic Church (can. 2319 § 1.2⁰). The same punishment was also imposed on Catholics who knowingly gave their children to the clerical baptism of any non-Catholic religious association (can. 2319 § 1,3⁰) and those who consciously gave their children up for upbringing or education in the non-Catholic religion (can. 2319 § 1,4⁰).

Such Catholic parents were additionally suspected of heresy (can. 2319 § 2). In 1950, by the decree of the Holy Office, the penalty of excommunication *latea sententiae* was added to the penalties of the Code, reserved to the Holy See in a special way for Catholics who taught principles contrary to Christian faith and good Christian practice. On the other hand, the right to receive the sacraments was denied to those who gave their children up for education in associations that promoted the principles of materialism and rejected Christian faith and Christian manners. Children belonging to the above associations could not receive the holy sacraments.⁴⁷

The codex systematics indicated that offenses related to the failure to fulfill the obligation to educate children as Catholics caused or contributed to taking a stand against faith and unity of the Church. They applied not only to parents in Catholic marriages, but without any distinction also to Catholics contracting mixed marriages. However, non-Catholics did not commit the crime and were not punished, although as baptized persons they were subject to the obligation to observe purely ecclesiastical laws, and such are penal laws. The reason for such decisions should be sought in the conviction of the Church resulting from their already present irregular situation as subjects of the Catholic Church, referred to as heretics and schismatics. As heretics and schismatics, they were subject to criminal laws (can. 2314). The Church decisions formulated in this way reflect the long tradition of the Church, according to which the punishments for the lack of Catholic education of children only affected the Catholic side. From the point of view of a criminal sanction for non-Catholic upbringing of children, the Code maintained the discipline that had been established in decretal law.

⁴⁷ CONGREGATION OF THE HOLY OFFICE: *Monnium* [28.06.1950]. AAS 42 (1950), p. 553.

7. The period after the Second Vatican Council

The ecclesiology of the Second Vatican Council exerted a great influence on the new discipline in matters of mixed marriages and the issue of raising children in them. Christian communities are no longer considered unlawful, and those who belong to them are no longer heretics or schismatics, even in a material sense. They are also not subject to the rights and obligations arising from the law of the Catholic Church. Consequently, on the basis of the teaching on the unity of the Church of Christ and the elements of truth present in other Christian denominations, the distinction between members of the Church (*membra Ecclesiae*) and subjects of the Church (*subditi Ecclesiae*) has disappeared. The recognition of the salvific character of non-Christian communities⁴⁸ influenced the recognition of these communities' own law.

The issue of religious freedom raised at the same council had a significant impact on the legal regulation concerning mixed marriages. The intuition of the Council Fathers who took up the issue of religious freedom as part of their deliberations on ecumenism should be emphasized. It gradually gained independence, eventually resulting with an independent document devoted to this issue.⁴⁹ Looking at the history of the longest discussion and work on the final document on religious freedom, it is difficult to resist the statement that its value was first emphasized within ecclesiology, and then became the subject of anthropological considerations. Thus, it more broadly influenced the considerations concerning not only external regulations, but most of all the obligation to act in accordance with what dictates a person's conscience and to respect such choices. This also applies to the question of faith and religion both internally (choice and duration) and externally in its proper practice in various and religiously possible forms.

The upbringing of offspring in the faith that is professed is also connected with acting in accordance with one's conscience. This obligation does not arise from an external command, but results primarily from the gift received, which the faithful receive for the sake of building the community to which they belong. This closest community is the Christian family initiated by marriage. The gift becomes an obligation, and the law becomes the, directly connected thereto, obligation to convey what has been offered for free. This is reminded by the Code of Canon Law of

⁴⁸ *Unitatis redintegratio*, n. 4.

⁴⁹ L. WĄSIK: "Zasada wolności religijnej w Deklaracji o wolności religijnej *Dignitatis humanae* Soboru Watykańskiego II." *Analecta Cracoviensia* 47 (2015), p. 82.

1983, placing the concern for the Christian education of children among the duties and rights of the lay faithful (can. 226). This obligation of parents also corresponds to the right to receive the Christian education of their offspring as “new creatures through rebirth from water and the Holy Spirit.”⁵⁰ Children endowed with the grace of baptism therefore have the right to grow in the faith they have received, and the parents thus become responsible for the development of this gift. John Paul II explicitly expresses this truth in the *Catechesi tradendae* by writing: “[...] from the theological point of view, every baptized person, on the basis of baptism itself, has the undeniable right to receive from the Church education and education that will enable him to come to a truly Christian life,”⁵¹ therefore “he has the right to receive the word of faith, full and complete in its sharpness and strength; it cannot be mutilated, adulterated or impoverished.”⁵²

As in the previous code, the currently applicable one also includes penalties for crimes against religion and the unity of the Church in the form of censorship or other just penalties (can. 1366). However, a significant difference becomes apparent. The legislator resigned from the penalties of *latae sententiae* in favour of *ferendae sententiae*. It should be emphasized, however, that the dimension of punishments is justified as far as other remedial measures, such as fraternal admonition, discipline or pastoral influence, cannot contribute to the achievement of the goal (can. 1341). Deciding that the person committing the offense of having their offspring baptized or educated in a non-Catholic religion is guilty, the legislator indicates that censorship is not the basic punishment. Alternative punishments in the form of expiatory punishments mentioned in canon 1336 §1, 1—4^o can be used. Criminal discipline regarding the education of children in the non-Catholic religion has been relaxed compared to the previous code, although it follows the legal tradition of the Church established in the law of decrees.

Significant changes in mixed marriages and the upbringing of children were made under the influence of the conciliar teaching of Pope Paul VI in the documents mentioned at the beginning. The existing requirements on the non-Catholic side for children in mixed marriages to be brought up in the Catholic religion is contrary to the principle of religious freedom and forces non-Catholics to act against their own conscience. It is also incompatible with the spirit of ecumenism towards non-Catholic

⁵⁰ VATICAN COUNCIL II: *Declaration on Christian Education “Gravissimum educationis”* [28.10.1965], n. 2.

⁵¹ JOHN PAUL II: *Post-synodal Apostolic Exhortation “Catechesis tradendae”* [16.10.1979], n. 14.

⁵² *Catechesis tradendae*, n. 30.

Christians. The legislator had to react to the contradiction that arose between the doctrine and legal regulations. In the light of *Matrimonia mixta*, in mixed marriages, the Catholic and non-Catholic parties have the same rights and obligations and are equally obliged to cooperate in the upbringing of children. The Catholic side, however, is still obliged to do everything so that the offspring are baptized and brought up in the Catholic Church. The non-Catholic side is only supposed to acknowledge the commitments of the Catholic side. It is no longer required to consent to the Catholic upbringing of their children.

A novelty introduced by Paul VI is also the removal of the hitherto applicable penalties related to the rearing of offspring in mixed marriages.⁵³ The penalty for entering into a mixed marriage with an agreement to raise children outside the Catholic Church has been lifted. There is also no such penalty in the current Code of Canon Law. No legal liability for the contract of education of children outside the Catholic Church is an expression of the implementation of the principle of religious freedom and manifests the spirit of ecumenism in canon law.⁵⁴

A separate issue worth paying attention to in the light of *Matrimonia mixta* is the penalty for parents who have their children baptized or brought up in a non-Catholic religion. Doubts may arise regarding the definition of the parents: Are they Catholic parents or, as in the case of a mixed marriage, is the Catholic party also the subject of the crime in a mixed marriage? It cannot be the non-Catholic party that is not subject to purely ecclesiastical laws. When a child is baptized in a non-Catholic religion, the Catholic party does not commit a crime as long as it did everything that was possible to baptize the child in the Catholic faith. Therefore, failure to fulfill an obligation does not constitute a criminal offense. Such an interpretation is allowed by canon 6 § 2, which prescribes an interpretation taking into account the canonistic tradition, that is, in accordance with *motu proprio Matrimonia mixta*.⁵⁵ The same approach should be applied to the issue of putting children up for education in a non-Catholic religion. In the light of the canonist tradition, the normative solutions of *Matrimonia mixta* should be adopted, in which the penalties for the non-Catholic upbringing of children in mixed marriages were abolished. Therefore, in such marriages, the Catholic party does not commit a crime if, without doing everything in their power, gives the child up for education in a non-Catholic religion. The same interpretation

⁵³ *Matrimonia mixta*, n. 15.

⁵⁴ J. SYRYJCZYK: "Troska Kościoła o katolickie wychowanie dzieci w kanonicznym prawie karnym..." p. 217.

⁵⁵ J. SYRYJCZYK: *Kanoniczne prawo karne*. Vol. 2: *Część szczegółowa*. Warszawa 2003, pp. 40—41.

results from the commonly, though not fully accepted, conflict of laws principle that *lex posteriori generalis non derogat legi priori speciali*. The cessation of punishment for teaching children and adolescents contrary to the Christian faith and morals introduced by the Congregation of the Holy Office in 1950 is determined by canon 6 § 1,3^o, according to which all penal statutes issued by the Holy See are no longer in force, unless they have been incorporated into the Code of Canon Law.

8. Conclusions

1. Mixed marriages between Christians and pagans, and later between Catholics and non-Catholics, in the history of the Church were not subject to an absolute prohibition, although there were various ways of regulating them, especially after a clear difference between *disparitas cutus* and *mixta religio* appeared. The natural right to marry was noticed, and was regulated in the church community only because of the possibility of loss of the gift of faith.

2. An expression of the development of theological thought and its interpretation in the perspective of marriage between Christians was the transition from placing barriers to such marriages to their support and development in today's teaching of the Church. This path can be described as a transition from reluctance to perceiving their value.

3. The consequence of the developing ecclesiology are legal solutions which reflect the beliefs concerning the personal status of every human being and the specification of his rights and obligations also in the community of the Church

4. The obligation to raise children in Christian and Catholic way found its foundations in the obligation arising from endowing the faith, and not protecting it. This duty has a double source. It results from the rights of the baptized person (offspring) to receive what is needed for the growth of the Christian life as well as from the obligation to build the Christian community by transmitting the grace of free-given vocation to life with God.

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TOMASZ ROBERT GAŁKOWSKI

L'éducation des enfants dans les mariages mixtes dans une perspective historique

Résumé

L'éducation des enfants dans les mariages entre chrétiens et personnes d'autres religions, voire païens, ainsi que, plus tard, entre catholiques et non-catholiques, a toujours été une préoccupation de la communauté ecclésiale depuis ses débuts. Cette étude se concentre sur ce sujet en mettant l'accent non seulement sur les aspects juridiques mais surtout sur leurs fondements. Les analyses menées révèlent qu'il y a eu une évolution marquée de la protection de la foi objective vers l'expression subjective et personnelle de la nature relationnelle du mariage, ainsi que des droits et des obligations qui découlent de la grâce du don gratuit de l'appartenance au Christ.

Mots-clés : mariages mixtes, parents, enfants, éducation, droits, obligations

TOMASZ ROBERT GAŁKOWSKI

Educazione della prole nei matrimoni misti in prospettiva storica

Sommario

L'educazione della prole nei matrimoni di cristiani con aderenti di altre religioni o pagani, e successivamente di cattolici con non cattolici, è stata fin dall'inizio oggetto di preoccupazione della comunità ecclesiale. Questo studio è dedicato a tale questione, in cui l'Autore si concentra più sulle fondamenta delle regolazioni legali che sulle questioni legali stesse. Le analisi condotte indicano che si è verificato un significativo passaggio dalla protezione oggettiva della fede all'espressione soggettiva del carattere personale della relazione matrimoniale e dei diritti e doveri connessi derivanti dalla grazia gratuita dell'appartenenza a Cristo.

Parole chiave: matrimoni misti, genitori, figli, educazione, diritti, doveri