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THE LAW OF MARRIAGE AND DIVORCE
IN THE CHURCH OF ENGLAND
AND THE CHURCH OF GREECE
SINCE 1850
WITH ITS THEOLOGICAL IMPLICATIONS

Bishop Aristarchos Mavrakis

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A B S T R A C T

This dissertation consists of three parts preceded by an introductory section and followed by four Appendices and selected Bibliographies in English and Greek.

In the Introduction the Biblical and historical data of Marriage Theology and practice are briefly outlined.

Part I consists of five chapters which deal respectively with :

- 1) the background to the situation in England in the mid-nineteenth century;
- 2) the general development of the civil and ecclesiastical legislation in England concerning the formalities, conditions and impediments to marriage since 1850;
- 3) the civil and ecclesiastical legislation of Nullity with the amendments made through the various statutes;
- 4) the progress and development of the law of divorce in England before and after the 1857 Matrimonial Causes Act, as well as after the 1937 Matrimonial Causes Act to 1950; and
- 5) further developments in England from 1950 to the present time.

Part II is also divided into five chapters which, respectively deal with :

- 1) the Byzantine background to the law of marriage and divorce in the Greek Orthodox Church in 1850 based on Armenopoulos' Hexabiblos, and the new developments owing to the establishment of the new kingdom of Greece in 1832;
- 2) the development of the conditions and ~~impediments~~ impediments to marriage with the various amendments made in the course of time;
- 3) the development of the law of nullity;
- 4) the three main stages of the development of the law of divorce in Greece during the period under consideration (before 1920, 1920 to 1940, since 1940);
- and 5) further developments in Greece since 1950 and in particular the question of the so-called 'dead marriages' and the recent discussions on civil marriage in Greece.

In Part III the main points of the civil and ecclesiastical legislation on Marriage in England and Greece are compared and the conclusions of the present investigation are drawn out. The Orthodox and Anglican theological stances concerning marriage, though closely similar on the general theoretical and ritual basis, seem to diverge decisively on practical considerations, particularly in the case of broken marriages.

Appendix I provides a brief exposition of the Orthodox conception of 'economy' which has particular

relevance for understanding the practice of the Orthodox Church on marriage.

Appendix II deals with the liturgical structure of the Orthodox rite of marriage and provides an English version of the actual liturgical Order for first and second marriages, as well as the Service for re-establishing dissolved marriages.

Appendix III provides the basic canons governing the present law of marriage and divorce in the Church of England, and the Form of Solemnization of Matrimony according to the 1662 Book of Common Prayer.

Appendix IV includes an English-Greek and a Greek-English glossary of some terms used in connection with the law of marriage and divorce and selected English and Greek Bibliographies.

P R E F A C E

Ever since the emergence of the well known cases of marriage between a member of the Royal family and a divorced commoner arose, marriage in Church and State has become a burning issue in the theological and pastoral agenda of the Anglican Church.

The present research was first undertaken a number of years ago, aiming at the clarification of the matter through a thorough analysis of its legal, canonical and theological aspects; hence the choice of the dates 1850 and 1950 in the structure of the dissertation.

It was thought appropriate that this analysis should not be restricted to the English situation alone, but a parallel case should be sought in another cultural context, which would provide the basis for fruitful comparison and dialogue.

Though interrupted for a number of years, after it was first undertaken, this research was resumed and updated during the present academic year, because the subject still remains a topical 'desideratum'.

Not only in its comparative aspect, but also in the particular analyses of the respective cases, this investigation is concerned with the fundamental historical, legal, canonical, liturgical and theological data.

The emerging picture indicates that there is a lot in common between the Anglican and the Orthodox approach to marriage and divorce, but there are also crucial differences in practice and in theory, which, if recognised, may lead to further constructive developments on both sides.

Two names at least should be mentioned here for providing encouragement and valuable suggestions for the structure and particulars of this work, the Rev. Th. Weatherall, former Principal of St. Chad's College and the Very Rev. G. Dragas, Lecturer in Patristics at the Department of Theology, University of Durham.

GENERAL INTRODUCTION ON MARRIAGE

a. The Teaching of the Old Testament and Judaism

To establish a historical background of Christian marriage we must first go to the Bible for it is there that we find an authoritative account of human beginnings. For the purpose of this inquiry the best division of the Old Testament would be :

- (a) the Patriarchal records, existing from the creation to the time of Joseph;
- (b) the Levitical compilation, containing the codified moral law of Israel, and
- (c) the Prophetical teaching, which includes the work and teaching of the Prophets of Israel.

In the first period we have God's plain institution of marriage which was to be monogamic and lifelong :

" God said 'Let us make man in our image, after our likeness; and let them have dominion over ... all the earth and over every creeping thing that creeps upon the earth'; so God created man in His own image, in the image of God He created him"(1) ;

" and the Lord God said, it is not good that man should be alone; I will make him an help meet for him"(2) ;

" so the Lord God caused a deep sleep to fall upon the man, and while he slept took one of his ribs and closed up its place with flesh; and the rib which the Lord God had taken from the man He made into a woman and brought her to the man"(3) ;

" and God blessed them and said to them 'be fruitful and multiply and fill the earth and subdue it; and have dominion over ... every living thing that moves upon the earth'"(4).

-
- 1) Genesis 1, 26-27
 - 2) Gen. 2, 18
 - 3) Gen. 2, 21-22 & 5, 1-2
 - 4) Gen. 1, 28



The Patriarchs of the Seth's line are said to be monogamous⁽¹⁾, and polygamy first appears in the line of Cain, when Lamech takes two wives⁽²⁾.

Abraham had at first only one wife, Sarah, and it was because she was barren that he took her handmaid Hagar, at Sarah's own suggestion⁽³⁾. Abraham also married Keturah⁽⁴⁾, but since this is related after the death of Sarah⁽⁵⁾, Keturah could have been his lawful, wedded wife. Similarly, Mahor, who had children by his wife Milkah, also had a concubine, Reumah⁽⁶⁾; and Eliphaz, son of Esau, had both a wife and a concubine⁽⁷⁾. In all this the Patriarchs were following the customs of the time. According to the code of Hammurabi⁽⁸⁾, the husband may not take a second wife unless the first is barren, and he loses this right if the wife herself gives him a slave as concubine. The husband can, however, himself take a concubine, even if his wife has borne him children; but the concubine never has the same rights as the wife, and he may not take another concubine unless the first is barren⁽⁹⁾. But other examples show that these restrictions were not always observed. Jacob married the two sisters

1) e.g. Noah in Genesis 7,7 cf Roland de Vaux, Ancient Israel vol. I, Social Institutions, New York-Toronto, 1965 pp.24ff.

2) Gen. 4, 19

3) Gen. 16, 1-2

4) Gen. 25, 1

5) Gen. 23, 1-2

6) Gen. 22, 20-24

7) Gen. 36, 11-12

8) About 1700 B.C. cf Roland de Vaux, op.cit. p. 24

9) ibid. p. 24

Leah and Rachel, each of whom gave him her maid⁽¹⁾, and Esau had three wives, who were of equal rank⁽²⁾.

Under the Judges and the monarchs, bigamy was recognised as a legal fact⁽³⁾ and the kings sometimes kept a large harem⁽⁴⁾. There was, it seems, no limit to the number of wives and concubines, a man may have. It is recorded that Gideon had "many wives" and at least one concubine⁽⁵⁾. Much later the Talmud fixed the number of wives at four for a subject and eighteen for a king⁽⁶⁾. In practice, however, it was too expensive to support more than one wife, therefore, only rich people and royalty could afford the luxury of a large harem, whilst commoners had to be content with one wife, or two at the most⁽⁷⁾. Samuel's father had two wives, one of whom was barren⁽⁸⁾. Naturally, in such cases, the presence of several wives did not make for peace in the home. A barren wife would be despised by her companion, even if the latter were a slave⁽⁹⁾, and the barren wife could be jealous of one with children⁽¹⁰⁾. The husband's preference for one of his wives could make this rivalry

1) Gen. 29, 15-30; 30, 1-9

2) Gen. 26, 34 ; 28, 9; 36, 1-5

3) Deut. 21, 15-17

4) Roland de Vaux, op. cit. p. 25

5) Judges 8, 30-31

6) Roland de Vaux, op. cit. p. 25

7) ibid., p. 25; Judg. 8, 30; II Sam. 5, 13; Βασιλείου Βέλλα, Ὁ Ἰσραηλιτικὸς Γάμος, Ἀθήναι, 1935 p. 13

8) I Sam. 1, 2

9) cf Sarah and Hagar in Gen. 16, 4-5

10) Gen. 30, 1

more bitter⁽¹⁾, so the law had to intervene to prevent the children of his favourite from receiving more than their fair share of inheritance⁽²⁾.

In the book of Deuteronomy there is a table of rules for married life⁽³⁾. If a man brings a false accusation of immorality against his wife and cannot prove it, he shall pay a fine to her father and be precluded from divorcing her⁽⁴⁾; if the accusation be proved, then the wife and her accomplice should be stoned to death⁽⁵⁾. Marriages with foreign women and even between persons of different families were forbidden⁽⁶⁾. However, despite these explicit prohibitions such marriages did take place, as were the cases of Esau who married two Hittite women⁽⁷⁾, Joseph an Egyptian⁽⁸⁾, Moses a Midianite⁽⁹⁾ and Solomon whose harem included "besides the Pharaoh's daughter, Moabites, Ammonites, Edomites, Sidonians and Hittites"⁽¹⁰⁾. These mixed marriages, made by kings for political reasons, became common among subjects also, after the settlement in Canaan⁽¹¹⁾. They not only tainted the purity of Israel's blood, but also endangered

1) Gen. 29, 30-31

2) Roland de Vaux, op. cit. p. 25 and B. Βέλλαζορ, cit. p.14

3) Deut. chapter 22

4) Deut. 22, 13-20

5) Deut. 22, 13-20 this is again found in Leviticus 17,18

6) Gen. 24, 4; Gen. 28, 2; Gen. 29,19; Judges 14, 3; Tob. 4, 12.

7) Gen. 26, 34

8) Gen. 41, 45

9) Exod. 2, 21

10) I Kings 11, 1; 14, 21

11) Judges 3, 6

its religious faith⁽¹⁾ and were therefore forbidden by law⁽²⁾. It was for this reason that the prophets spoke with great fury against the uncleanness of Israel and over and over again stressed that pure monogamy was the ideal state of marriage.

The Prophets Hosea, Isaiah and Jeremiah were vigorous protagonists, and there is no fiercer champion to be found in Holy Scripture of the sanctity of a monogamous home than the Prophet Malachi. Also the Psalms describe the happiness of monogamy⁽³⁾. The following are some examples of the prophetic fury against the uncleanness of Israel. The Prophet Hosea says :

" Hear the word of the Lord, O people of Israel; for the Lord has a controversy with the inhabitants of the land. There is no faithfulness or kindness, and no knowledge of God in the land; there is swearing, lying, killing, stealing, and committing adultery"⁽⁴⁾;

" For a spirit of harlotry has led them astray, and they have left their God to play the harlot"⁽⁵⁾;

" Therefore your daughters play the harlot, and your brides commit adultery. I will not punish your daughters when they play the harlot, nor your brides when they commit adultery; for the men themselves go aside with harlots, and sacrifice with cult prostitutes, and a people without understanding shall come to ruin"⁽⁶⁾

The Prophet Isaiah also cries :

" But you, draw near hither, sons of the sorceress, offspring of the adulterer and the harlot. Of whom are you making sport ? Against whom do you open your mouth wide and put out your tongue ? Are you not children of transgression, the offspring of deceit?"⁽⁷⁾.

1) I Kings 11, 4

2) Exod. 34, 15-16; Deut. 7, 3-4

3) Psalm 128

4) Hosea 4, 1-2

5) Hosea 4, 12

6) Hosea 4, 13-14

7) Isaiah, 57, 3-4 also 3, 25 - 4,1; 54, 1-8

Jeremiah is very vehement in his language :

" How can I pardon you ? Your children have forsaken me, and have sworn by those who are no gods. When I fed them to the full, they committed adultery and trooped to the houses of harlots. They were well-fed lusty stallions, each neighing for his neighbour's wife. Shall I not punish them for these things ? says the Lord; and shall I not avenge myself on a nation such as this ?"(1);

" because they have committed folly in Israel, they have committed adultery with their neighbours' wives, and they have spoken in my name lying words which I did not command them. I am the one who knows, and I am witness, says the Lord"(2).

And Malachi speaks more weightily than them all :

" And this again you do. You cover the Lord's altar with tears, with weeping and groaning because he no longer regards the offering or accepts it with favour at your hand. You ask 'why does He not?' Because the Lord was witness to the covenant between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant. Has not the one God made and sustained for us the spirit of life ? And what does He desire ? Godly offspring. So take heed to yourselves, and let none be faithless to the wife of his youth"(3)

Such then was the state of affairs as recorded and described by the inspired writers of the Old Testament in anger and despair.

Interpreting the testimony from the Genesis account Hebrew thought saw the essential meaning and goal of marriage as procreation, since the most obvious and necessary sign of God's blessing was seen in the continuation of the race.

1) Jeremiah 5, 7-9
2) Jeremiah 29, 23
3) Malachi 2, 13-15

" I will indeed bless you, and I will multiply your descendants as the stars of heaven and as the sand which is on the seashore. And your descendants shall possess the gate of their enemies, and by your descendants shall all the nations of the earth bless themselves because you have obeyed my voice"(1).

This solemn promise given to Abraham implied that life could be perpetuated through posterity, hence the central importance of childbirth, which also explains a) why in Judaism the absence of children was seen as a curse, especially for women⁽²⁾, and b) why polygamy in Judaism was not a rare practice, whilst concubinage was also tolerated and even sometimes recommended to secure the continuation of the race⁽³⁾. Furthermore in Judaism there was the institution of the levirate⁽⁴⁾ which consisted of an obligation for a man to "raise the seed" of a dead brother by marrying his widow, and thus securing for him a partial survival in the children of his wife.

It is reasonable to presume that even in the earliest times of the Old Testament the act of marriage must have been accompanied by some sort of a ceremony. The biblical authors, however, give no direct description and usually refer to it only in passing or as a figure in their imagery. There is evidence that the act of marriage at that time was simply called taking⁽⁵⁾.

1) Gen. 22, 17-18

2) Gen. 16, 2; 30, 3-9

3) T.A. Lacey, Marriage in Church and State, London, S.P.C.K. revised edition, 1947 p. 10

4) Gen. 38, 8; Deut. 25, 5-10

5) Encyclopedia Judaica, Jerusalem, 1974, vol. XI, pp. 1032 - 1052.

" and there went a man from the house of Levi and took to wife a daughter of Levi"(1).

From the story of Jacob and Leah it is obvious that some sort of celebration took place :

" So Laban gathered together all the men of the place, and made a feast"(2).

Later when Jacob complained that he had been cheated and demanded Rachel, the daughter for whom he had worked, he was told :

" Complete the week of this one, and we will give you the other also in return for serving me another seven years"(3).

No details are recorded as to the nature of the feast or the bridal week. The same is true in the case of Samson⁽⁴⁾, except that there, it is said that, the groom posed a riddle to his companions and gave them the seven days of the feast to solve it⁽⁵⁾. It appears that processions for both the bride and groom were a central part of the celebrations, which were accompanied by music⁽⁶⁾, and there is also ample reference to special attire and adornment⁽⁷⁾ Only at a later time the mode of contracting a marriage was prescribed with some fulness in Rabbinical law⁽⁸⁾.

1) Exodus 2, 1

2) Gen. 29, 22

3) Gen. 29, 27

4) Judges 14, 12

5) Judges 14, 14 "and he said to them, 'out of the eater came something to eat. Out of the strong came something sweet' and they could not in three days tell what the riddle was" but the men of the city forced Samson's wife to entice him for the solution and "on the seventh day before the sun went down they said to him 'What is sweeter than honey ? What is stronger than a lion ?'" Judg. 14, 18

6) Psalms 78, 63; I Macc. 9, 39

7) Encyclopedia Judaica, op. cit. p. 1052; Roland de Vaux, op. cit. p. 33. Also it seems that the exhibition of evidence of the bride's virginity (the blood stained sheet) was part of the ceremony, Roland de Vaux op. cit. p. 34

8) T.A. Lacey, op. cit. p. 95

A mere verbal consent was not held sufficient; there must be an act, attended with considerable publicity. This act included a) the espousals, and b) the nuptials, which were both required with an interval of not less than thirty days, in the case of a widow, or of a whole year in the case of a virgin⁽¹⁾.

The espousal was not merely a promise of marriage, or consent de futuro; it was a real initiation of marriage and could be dissolved only by death or divorce, and the formality required was either a gift of money, with the words "Be thou consecrated to me", or a written instrument (Shetar) conceived in like terms⁽²⁾. The presence of witnesses was essential, and according to the ritual law the betrothal was to be blessed with prayers⁽³⁾.

The essential act of the nuptials, which followed, was the conveyance of the bride from her own home to that of the bridegroom, or to a place representing his home, where she was received in the presence of friends and neighbours, and was blessed either by the bridegroom himself, or by one of the witnesses. The blessings, however, do not seem to have been regarded as essential for a valid union⁽⁴⁾.

Marriage was guarded by impediments some of which were Mosaic and others represent later additions to the law,

1) T.A. Lacey, op. cit. p. 96; Roland de Vaux, op. cit. p. 34
2) Encyclopedia Judaica, op. cit. p. 1032; Lacey, op. cit. p. 96
3) ibid. p. 96
4) ibid. p. 96; Roland de Vaux op. cit. p. 33

the main collection of which is found in the Leviticus⁽¹⁾. Espousals contracted in spite of them might be cancelled, but a consummated marriage must be dissolved by a bill of divorcement⁽²⁾. The prohibition of intermarriage with Gentiles was most important⁽³⁾. Parents took all the decisions when a marriage was being arranged without their children being consulted,⁽⁴⁾ their consent was asked afterwards⁽⁵⁾. However, parental authority was not such as to leave no room for the young people to take the initiative⁽⁶⁾.

Divorce was the privilege of the husband. According to the Mosaic law, he could dismiss a wife on the ground of dislike, but only if he were able to allege some uncleanness or grave unseemliness, as the cause of disfavour⁽⁷⁾. But the law required of him to give her a bill of divorcement, which was her full discharge, enabling her to marry another man⁽⁸⁾. The Schools of Shammai and Hillel hotly disputed the meaning of the uncleanness which would justify divorce. The rigorist school of Shammai admitted only adultery and misconduct as grounds for divorce, but the more liberal school of Hillel would accept any reason, however trivial, such as

1) Leviticus, chapter 18; for a detailed treatment of the subject see also Appendix VIII of the Report The Church and Marriage of the Joint Committees of the Convocations of Canterbury and York, London, S.P.C.K. 1935 pp. 97-100

2) T.A. Lacey, op. cit. p. 97

3) Judges 3, 6; Exodus 34, 15-16; Deut. 7, 3-4

4) Gen. 24, 33-53 cf Roland de Vaux, op. cit. pp. 29-30

5) ibid. pp. 29-30

6) ibid. p. 30

7) Deut. 14, 1-2; 27, 22; Gen. 6,5; 9, 21; Exodus 20, 13-14

8) Levit. 18, 7-27; 20, 17 cf Roland de Vaux, op. cit. p. 39

the charge that a wife was a bad cook, or merely that the husband preferred another woman⁽¹⁾. A woman was not able to divorce her husband, although the rabbis of the first century A.D. held that in certain circumstances (for example cruelty, denial of conjugal rights etc.) she could make her husband divorce her⁽²⁾. As already mentioned, in the Jewish list of priorities, procreation was more important than marriage, so that, if a marriage had lasted for ten years without issue being born, the husband had either to divorce his wife and take another, or to take a second wife in addition to the first⁽³⁾.

On the basis of the above evidence of the Old Testament and the teaching of Judaism the following observations could be drawn :

- a) that marriage is a divine ordinance instituted by God;
- b) marriage is as old as humanity;
- c) it is a connection between one man and one woman;
- d) it was instituted by God for the good of man, for companionship, help, procreation of life, and perpetuation of God's likeness and image in the human life;
- e) we further gather that God in His perfect wisdom foresaw that the best way of carrying out the programme of the created Universe was through family life, i.e. all other

1) Roland de Vaux, op. cit. p. 34

2) Marriage, Divorce and the Church, Report of the Commission on the Christian Doctrine of Marriage, London S.P.C.K. 1971 Appendix I, Jesus on Divorce and Remarriage, by Hugh Montefiore pp. 79 ff, reprinted in Taking Our Past Into Our Future by H. Montefiore, Collins Fount Paperbacks, 1978pp.114 ff.

3) ibid. p. 115

- family claims should be subordinated to those of marriage, even parents must give way to a man's wife⁽¹⁾.
- f) the individuals cease to be two and become 'one flesh'⁽²⁾;
 - g) their union is for life;
 - h) the legislation of Deuteronomy⁽³⁾ recognised a permission (not prescription) for divorce, and gave legal conditions designed to reduce hasty divorce and minimise cruelty to the divorced wife. It thus recognised the fact of marriage breakdown and acknowledged the need for societal legislation to regulate divorce⁽⁴⁾.

But it has to be remembered that the Old Testament is a progressive revelation, and that in its early stages it presents a comparatively imperfect standard of ethics. Because after the fall⁽⁵⁾ the people of the Old Testament lived in a age when the things of this world were their chief concern, when power was the law and when :

" Political expedients were confounded with moral principles; wise precautions against the absorption of the chosen people of God into surrounding heathendom were translated into fundamental laws of marriage, and worst of all, accommodations to human imperfection were treated as express commandments of God"⁽⁶⁾.

1) Our Lord Himself makes this point clear in St. Matthew, where He states : "Have you not read that He Who made them from the beginning made them male and female, and said 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'. So they are no longer two but one. What therefore God has joined together let not man put asunder" Matth. 19, 4-6.

2) Gen. 2, 24

3) Deut. 24, 1-4

4) David Atkinson, To Have and to Hold, Collins, 1979 p. 125

5) Gen. 3, 1-19

6) T.A. Lacey, op. cit. p. 98

Inevitably the preaching of the Christian Gospel was a challenge to this heterogenous legislation and what our Lord did and said about the treatment of the Sabbath, He did also in regard to the law of marriage, which will be the subject of the following part in this general introduction.

b. The Teaching of the New Testament and the Early Church

The meaning of marriage in the New Testament changes radically from its conception in the Old Testament. Not a single text of New Testament, mentioning marriage, points to procreation as its sole justification or goal; and childbirth itself is a means of salvation only if it is accomplished "in faith, love and sanctity"⁽¹⁾.

Modifications of Old Testament norms appear in many cases in the New Testament, but of particular clarity are the following three instances on the subject of marriage, in regard to which the Synoptic Gospels have preserved an utterance of Jesus Christ. The first one is from the Sermon on the Mount where our Lord contrasts His own teaching with that of the law :

" It was also said, 'whoever divorces his wife, let him give her a certificate of divorce'. But I say to you that every one who divorces his wife, except on the ground of unchastity, makes her an adulteress; and whoever marries a divorced woman commits adultery"⁽²⁾.

The other passages deal with two questions addressed to our Lord; one is put by the Pharisees who ask whether divorce is justifiable outside the special case of fornication, to which Jesus Christ answers :

" 'Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'? So they are no longer two but one. What therefore God has joined together, let no man put asunder"⁽³⁾.

1) I Tim. 2, 15

2) Matth. 5, 31-32

3) Matth. 19, 4-6; cf Mark 10, 2-12; Luke 16, 18

Our Lord's answer to the Pharisees emphasises the permanence and indissolubility of the marriage tie. But from the Synoptic Gospels, St. Mark and St. Luke omit the exceptional case and our Lord there, does not deal with it directly. He only says that Moses had made an exception in view of the hardness of men's hearts⁽¹⁾.

Gospel criticism has been questioning the authenticity of the Matthean exception, with the result that various theories were developed as to whether Christ was legislating on the question of divorce or simply He was giving a rule and a principle with one single exception; or whether Jesus gave, not binding laws governing each and every marriage whatever its circumstances might be, but inspired teaching about the true nature of marriage as it was intended by God⁽²⁾. However, it must be pointed out, as Hugh Montefiore remarks, it cannot be coincidence that the academic conclusions of most scholars concerned are often in agreement with the discipline of the Church to which they belong⁽³⁾.

1) Mark 10, 5

2) Hugh Montefiore, Jesus on Divorce and Remarriage, Appendix I in Marriage Divorce and the Church, The Report of the Commission on the Christian Doctrine of Marriage, S.P.C.K. 1971, p. 90, reprinted in his latest book Taking Our Past into Our Future, Fount Paperbacks, 1978, p. 132

3) ibid. pp. 90 ff and 132 ff where Hugh Montefiore, now Bishop of Birmingham, gives a detailed account of recent treatment of the subject by various scholars. Thus, he points out, Roman Catholic scholars usually assert that Jesus gave a ruling that marriage is indissoluble; whereas Protestant or Reformed scholars (whose Churches usually permit marriage after divorce) tend to infer from the same evidence a very different conclusion. Anglican scholarship is often divided at this point (and it is worth noting that Anglican discipline too has differed). Anglo-Catholic scholars tended to infer from the New Testament that Jesus pronounced marriage to be indissoluble. Some Anglican scholars, while agreeing that

According to Orthodox tradition the teaching of Genesis⁽¹⁾ and the teaching of Jesus unambiguously hold to the ideal of indissoluble monogamous marriage by God's will. St. John Chrysostom, for example, in his interpretation of Jesus' words⁽²⁾, states that Christ showed that one man must forever dwell with one woman and never break off from her (and no doubt the reverse). According to Chrysostom, this is the teaching of God in Genesis not only by words but also by creation, for God did not create one Adam and two women, one to send away and another to bring in as a second wife⁽³⁾.

The other question, referred to marriage, is put to Christ by the Sadducees, "who say that there is no resurrection". They asked Jesus, who, among seven brothers, successively married to the same woman, will have her to wife 'in the resurrection', in other words, how the marriage conditions are possible in the world to come.

" But Jesus answered them, 'You are wrong, because you know neither the scripture nor the power of God. For in the resurrection they neither marry nor are given in marriage, but are like angels in heaven'(4).

The Sadducees rejected the resurrection because they could not understand it otherwise than as a restoration of earthly human existence, which would include the Judaic understanding of marriage as a means for procreation and posterity. Jesus' answer, therefore, was

~~that~~ Jesus 'legislated', inclined to believe that he made an exception of adultery. Others believed that Jesus' saying asserted not law but a principle. Many sat on the fence, contenting themselves with the statement that the exceptive clause in St. Matthew is an interpolation. ibid. p. 134
1) Gen. 2, 21-24 2) Comment. on Matthew 19, 4-6; P.G. 51, 17
3) Yet from ancient times the Church made concessions to human imperfection. See Appendix I on the notion of Economy
4) Matth. 22, 29-30; Mark 12, 18-27; Luke 20, 27-38 p. 283

nothing more than a denial of a naive and materialistic understanding of the resurrection. He speaks of the levirate and not of Christian marriage, whose meaning is revealed implicitly and explicitly on many other occasions in the New Testament.

The very presence of Christ at the marriage in Cana of Galilee⁽¹⁾ is considered as the restoration of marriage to sanctity and honourableness⁽²⁾. It was then that Christian marriage was set on a new standard, the standard of grace⁽³⁾.

This peculiar sanctity of marriage is emphasised by St. Paul in his epistle to the Ephesians⁽⁴⁾. In his mind, marriage is a relation which is comparable to that of Christ with His Church. The husband is the head of the wife, as Christ also is the head of the Church, being Himself the Saviour of the body. He speaks of it as a great mystery⁽⁵⁾, but it is clear that the union of Christ with the Church explains and emphasises the permanence of the marriage tie. This Pauline doctrine of marriage as a reflection of the union between Christ and the Church

1) John 2, 1-2

2) Athenagoras Kokkinakis, Parents and Priests as Servants of Redemption, New York, 1958, p. 35

3) In all other sacraments the Church just invites Christ. She asks for His blessing in her prayers and requests the descent of the Holy Spirit. In Cana such prayer was not necessary, for Christ Himself was there. Invocation was therefore not needed, for the fulness of Divinity was present and ready to restore man's marital unity to its natural dignity and sanctity" A. Kokkinakis, op. cit. p. 35

4) Ephesians 5, 23

5) Ephesians 5, 32

became the basis of the entire theology of marriage as found in the Orthodox tradition⁽¹⁾. Again St. John Chrysostom, interpreting Eph. 5, 22-33, suggests the eternity of marriage when he rhetorically counsels a couple to live the ideal of marriage as Christians so that they may in God's Kingdom be both with Christ and with each other enjoying more abundant pleasure⁽²⁾.

In I Corinthians St. Paul deals with certain matrimonial questions. Christian converts of Corinth gave him the motive to write his practical exhortations about the relations of man and woman and to declare clearly the duties of married persons :

" Now concerning the matters about which you wrote. It is well for a man not to touch a woman. But because of the temptation to immorality, each man should have his own wife and each woman her own husband. The husband should give to his wife her conjugal rights, and likewise the wife to her husband. For the wife does not rule over her own body, but the husband does; likewise the husband does not rule over his own body, but the wife does"⁽³⁾.

By concession he counsels them not to defraud each other except it be by mutual consent for a season⁽⁴⁾. He prefers personally celibacy, but he acknowledges that every man has his proper gift from God and so he did not command celibacy for it is better to marry than to burn⁽⁵⁾.

On the question of divorce St. Paul gives not his own advice but the Lord's command, according to which he

1) John Meyendorff, Marriage : An Orthodox Perspective, St. Vladimir's Seminary Press, 1970 p. 16

2) Homily XX, Comm. on Ephesians, P.G. 62, 9

3) I Cor. 7, 1-4

4) I Cor. 7, 5-6

5) I Cor. 7, 7-9

recognises the possibility of separation but not of remarriage. Every party must remain single or become reconciled to each other :

" To the married I give charge, not I but the Lord, that the wife should not separate from her husband (but if she does, let her remain single or else be reconciled to her husband) and that the husband should not divorce his wife"(1).

In another case on divorce again, but this time of mixed marriages, St. Paul gives his own opinion and distinguishes it from the decision of our Lord⁽²⁾. He had before him a problem, which had arisen in a Gentile Church -the situation where one of the parties to a marriage becomes a Christian. His advice in this case was that union with an unbeliever should continue, if that was decided by both and since God's will is that married people should live in peace. If this is impossible, then the Christian party can apply for a divorce with the right to remarry⁽³⁾.

" To the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise, your children would be unclean, but as it is they are holy. But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace"(4).

1) I Cor. 7, 10-11

2) I Cor. 7, 12

3) Hugh Montefiore, op. cit. p. 131; cf David Atkinson, op. cit. pp. 123-125

4) I Cor. 7, 12-15 This permissibility of remarriage in some circumstances is known as the Pauline privilege.

It is important to note here that St. Paul is dealing with marriage contracts not considered indissoluble at that time by those who made them. It could seem, therefore, as if he allowed the Church a power of dealing with new situations as new circumstances developed⁽¹⁾.

When he speaks of widowhood St. Paul presupposes that marriage is not broken by death, for love never fails⁽²⁾. His view on the remarriage of widowers, as it is expressed in I Corinthians, is strictly upheld by the canonical and sacramental tradition of the Orthodox Church :

" But if they cannot exercise self-control, they should marry. For it is better to marry than to be aflame with passion"⁽³⁾.

In general St. Paul's attitude towards marriage is clearly distinct from the Jewish Rabbinic view in that he gives such strong preference to celibacy over marriage⁽⁴⁾. Only in his epistle to the Ephesians is this negative view corrected by his doctrine of marriage as a reflection of the union between Christ and the Church, which has already been mentioned⁽⁵⁾. Throughout his teaching monogamy is assumed. He clearly states the duties and responsibilities of married persons. The bond of marriage ends physically by death and divorce is forbidden. He forbears mixed marriages and only in such cases he accepts the possibility of divorce and remarriage. By calling marriage a mystery

1) The Church and Marriage, op.cit. p. 7; cf Hugh Montefiore, op. cit. p. 131

2) I Cor. 13, 8

3) I Cor. 7, 9

4) I Cor. 7, 7-9; 7, 25-26, 32,38

5) Ephesians 5, 22-33 pp. 17-18

and by comparing it to the mystic union of Christ and His Church St. Paul emphasises the perfect union of husband and wife in one flesh, just as the Son of God ceased to be only Himself i.e. God, and became also man, so that the community of His people may also become His body⁽¹⁾.

In the first pastoral epistle to Timothy it is ordered that the wives remain in silence and keep their faith and charity with modesty, and it is also stated that they shall be saved through bearing children⁽²⁾. In the same epistle the advice is given that it is most desirable for young widows to contract a second marriage⁽³⁾.

In their effort to make the followers of the Lord grasp the meaning of His teachings and particularly the dignity and sanctity of marriage, the Apostles of Christ have drawn analogies in which the ideal of the Christian marriage is clarified. Among them St. Peter declared that spouses are the heirs of the grace of life :

" Likewise you husbands, live considerately with your wives, bestowing honour on the woman as the weaker sex, since you are joint heirs of the grace of life, in order that your prayers may not be hindered"(4).

The husband is no longer the master and the owner of his wife. Rather he is her protector and keeper; and the wife is no longer the slave and the property of the husband. She is rather the person to whom the husband owes honour; though weaker, she is with her husband heir

1) For the Biblical meaning and analogical significance of union in one flesh see able discussion in Derrick Sherwin Bailey, The Mystery of Love and Marriage, S.C.M. 1952 pp.41ff

2) I Tim. 2, 12-15 also Tit. 2, 4-5

3) I Tim. 5, 14

4) I Peter 3, 7

to the grace of life.⁽¹⁾ The references already made here from the utterances of our Lord and of the inspired writings of St. Paul and St. Peter manifest the dignity and sanctity given to Christian marriage.

It was in this way that marriage was conceived by the Primitive Church as a sacrament, anticipating the joy of the Kingdom of God and the grace of life. But at that early time of the Church no particular ceremony or rite to sanction marriage was yet developed⁽²⁾. Instead, a marriage conducted according to the laws of secular society was recognised as normal because the Church never tried to abolish these laws, nor to destroy the social order which instituted them. However, while accepting that, early Christians never forgot the specific and totally new experience and commitment which they accepted in Baptism and the Eucharist. What mattered, therefore, was not the particular ceremony used to conduct the marriage, but who was accepting the marriage contract. If the parties were Christian, then their marriage was a Christian marriage, involving christian responsibility and christian experience. For them marriage was a sacrament, not simply a legal agreement⁽³⁾.

Marriage, therefore, in the Early Church was closely connected with the Holy Eucharist, during which Baptism

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- 1) A. Kokkinakis, op. cit. p. 36
 - 2) J. Meyendorff, op. cit. p. 19
 - 3) ibid. p. 19

and the services of ordination to the Holy Orders were also celebrated⁽¹⁾. Every Christian couple desirous of marriage went through the formalities of civil registration which gave it validity in secular society; and then through their joint participation in the regular Sunday liturgy, in the presence of the entire local Christian community, they received the Bishop's blessing. It was then that their civil agreement became also sacrament with eternal value, transcending their earthly lives, because it was also inscribed in heaven and not only in the secular registry. It became an eternal union in Christ. This procedure is implied in a letter of the famous Bishop-martyr Ignatius of Antioch, who lived at the end of the first century :

" It is fitting for men and women who marry to form this union with the approval of the Bishop, that their union may be according to the will of God and not according to the dictates of concupiscence"(2).

Early Christian writers -the same ones who otherwise give full recognition to the legal validity of civil marriages according to laws⁽³⁾ - also affirm that it is

1) J. Meyendorff, op. cit. p. 24

2) Ignatius, Ad Polycarp 5, 2 P.G. 5, 718 " Ἦρέκει δέ τοις γαμοῖσι καί ταῖς γαμουμέναις μετὰ γνώμης τοῦ ἐπισκόπου τήν ἑνωσιν ποιῆσθαι, ἵνα ὁ γάμος ἢ κατὰ κύριον καί μή κατ' ἐπιούριαν".

3) The following are the words of one of the Apologists, Athenagoras, who lived in the middle of the second century, and wrote an Apology to Emperor Marcus Aurelius in defense of Christians against various accusations : "every one of us considers as his the woman whom he married according to your laws", Apology to Marcus Aurelius, chapt. 33, P.G. 6, 889 "Πρεσβεῖα περὶ Χριστιανῶν", κεφ. 33 "γυναῖκα μὲν ἕκαστος ἡμῶν, ἣν ἠγάγετο κατὰ τοῦς ὑφ' ὑμῶν τεθειμένους νόμους νομίζει"

the Eucharist which gives to marriage its specifically Christian meaning. Thus Tertullian who lived in the second century writes that :

" marriage is arranged by the Church, confirmed by the oblation (the Eucharist), sealed by the blessing, and inscribed in heaven by the angels"(1).

The references made here from the New Testament and from the primitive Church manifest the Christian aspect of marriage as it was restored to its dignity and sanctity by Christ, which is rather different from the concept of the Judaic thought. According to this evidence marriage was set on a new standard, the standard of grace. It became a sacrament, in which the physical unity is blessed and completed by the spiritual bond which, through the blessing of the Church and participation in the Holy Eucharist, the Holy Spirit imparts to the Christian spouses. This spiritual bond is the intrinsic nature of marriage or its inward part; while the free human decision of the two persons to live together, loving, trusting and helping each other till death, is the outward part of the sacrament. The mutual subordination in the fear of God, and above all the love of the husband for his wife, according to the example of the love of Christ towards His Church, are the characteristic elements of the Early Church's conception of marriage.

1) Tertullian, Ad Uxorem, 11, 9 P.L. 1,1302

c. Marriage in the Greco-Roman ante-Nicene era

During the first three centuries of Christianity the Christian Church was obliged to conform to the Roman laws regulating marriage.⁽¹⁾ Reference regarding this has already been made in the case of the Apologist Athenagoras, who defending the Christians against various charges of which they were accused, wrote an Apology to Emperor Marcus Aurelius stating that every Christian considers as his, "the woman whom he married according to your laws"⁽²⁾.

What these laws and regulations were ?

The Roman definition of marriage first found in the jurist Modestinus (237) declared marriage to be "a union between man and woman, an association for the whole life in which the two share the same civil and religious rights"⁽³⁾.

Basically Roman marriages were of two classes :

(1) those by which the wife was brought under the m a n u s of her husband, in which case she was fully incorporated into the f a m i l i a, and became subject to him as the P a t e r f a m i l i a s⁽⁴⁾. This gave the wife a right

1) Meyendorff, op. cit. p. 18

2) Athenagoras, Corp. Apolog. Christ. VII, 170, P.G. 6, 889
As another example, the case of the "repudiation" which a Christian woman gave to her husband, mentioned by Justin, may be recalled Apology II, ch. 2; P.G. 6, 444 f

3) Nuptie sunt conjunctio maris et faminae, et consortium omnis vitae, divini et humani juris communicatio, Dig. xxiii 2 in G.H. Joyce, Christian Marriage, London, 1948 p. 40

4) This form was known as confarreatio or coemptio and the man acquired the manus at the nuptials cf. H.J. Wilkins, The History of Divorce and Re-Marriage, Longmans, 1916 p. 2 see also The Roman Law of Marriage by Percy Ellwood Corbett, Oxford, 1969

to share in the 'sacra privata Familiae' and made her 'socia rei humane et divinae'.

(2) those in which the conventio in manus did not take place, and the wife retained in some measure an independent status. (1)

Both forms gave the husband extensive powers over the children. These powers were known as the 'Patria potestas'.

A somewhat elaborate ceremonial accompanied both betrothal and marriage. Formal betrothal (Sponsalia, disponsation) was in no sense obligatory, but was generally practiced. Its chief observances were : the bestowal of bridal gifts (arhae) by the man on his future wife, these being in theory earneste of the donatio proper nuptiae, the property to be settled upon her, the ring (anulus pronobus), the kiss, and the arrangement of the marriage contract (tabulae sponsales, matrimoniales)⁽²⁾.

On the evening before the marriage the bride was vested in the dress worn by married women and she put on the veil known from its colour as the 'flammeum'⁽³⁾. On the wedding day itself took place the formal reading of the contract (regitatio tabularum), which was then signed by the parties concerned and other witnesses⁽⁴⁾, and later was delivered to the bride. A crown of flowers

1) G.H. Joyce, op. cit. p. 42 through this form a transition was made from the strict to the free marriage cf. H.J. Wilkins, op. cit. note 2 in p. 9; cf Kaser Max, Roman Private Law, Durban, 1965, p. 240

2) G.H. Joyce, op. cit. p. 42 and The Oxford Classical Dictionary, sec. ed. Oxford, 1973, pp. 650-651

3) ibid. pp. 650-651

4) In such marriages of Christian couples, it is mentioned by St. Augustine that, it was customary for the Bishop to be one of the signatories; St. Augustine Sermon 332, N 4 P.L. 38, 1463

was worn both by bride and bridegroom. This wreath was made chiefly of verbena, a plant sacred to Venus. The next part of the ceremony was the 'concluctatio manuum' or mutual joining of hands by bride and bridegroom. This was generally followed by the sacrifice of a victim to Jupiter⁽¹⁾. In the evening the bride was conducted in a sort of triumphal procession to her husband's house.

The Roman jurist had laid down as a principle that the essential element in marriage was the consent of the parties⁽²⁾. Though nuptials was recognised as a distinct contract, the consent of betrothal was considered as passing automatically into a consent to actual present union. It thus became a matter of dispute among jurists at what moment betrothal passed into marriage. The 'deductio' was held to afford proof of marriage, but was not marriage itself⁽³⁾. The consent of the persons under whose 'potestas' the couple were, was also necessary. If the consent had been duly given the marriage was legally complete, even though the customary ceremonies were omitted⁽⁴⁾. The most important ceremony was the home-coming of the bride -the deductio in domum. Yet even this was only essential in the exceptional case of a marriage celebrated in the absence of the bridegroom. If the later signified his consent in writing, or through

1) Corbett, op. cit. pp. 72-73

2) ibid. p. 60

3) Joyce, op. cit. p. 42

4) ibid. p. 42 cf Corbett, op. cit. pp. 62-64

a messenger, and the bride was taken to his house, the marriage held good; and even though he should die before seeing her, she possessed the legal status of a wife⁽¹⁾.

The union of slaves was not regarded as matrimonium but as contubernium. A free Roman could not make a slave his wife. His relation with her was a contubernium or at best a concubinatum⁽²⁾. If a Roman citizen took as his wife a provincial or a Latin to whom the right of connubium had not been granted, the children took the status not of their father, but of their mother⁽³⁾, and such a union was termed matrimonium injustum.

In the Roman world marriage was not conceived primarily as a means to secure posterity, but as an agreement between two freely choosing parties, hence the famous principle of Roman law, specifying that "marriage is not in the intercourse, but in the consent"⁽⁴⁾ and the definition popularised by Modestinus that "cohabitation with a free woman is marriage and not concubinate"⁽⁵⁾.

The union was strictly monogamous, and whilst at first the right of divorce was restricted to the husband alone, soon this had passed away and free contract both for husband and wife had taken its place, "the marriage form being a simple private agreement and divorce a formless private transaction open equally to both parties"⁽⁶⁾.

1) Joyce, op. cit. p. 42

2) Corbett, op. cit. p. 30

3) Joyce, op. cit. p. 42

4) 'Nuptiae non concubinatus sed consensus facit', Joyce, ib. p. 42

5) This presupposed that a slave woman could not give her free consent, and therefore cohabitation with her could never be called marriage. Meyendorff, op. cit. p. 17

6) Wilkins, op. cit. p. 2

Such then was the teaching and practice on marriage and divorce in the Roman world when Christianity appeared and already some references have been made regarding the attitude of the primitive Church during the first century. What must now be considered is some evidence on the belief and the teaching of the Early Church during the second century and the rest of the Ante-Nicene period.

At that time Christians were accused of various charges, such as incest, immorality, plotting against the State etc., because of their living apart from the rest of the population and because of their 'secret discipline',⁽¹⁾.

The defence of the Church was undertaken by the Apologists of the second century, who in refuting the accusations stated that, Christians are so far from committing such crimes that, even in thought, they do not permit a sin against purity. The Christian ideas regarding marriage and virginity indicate how high their esteem of chastity is. However, being in the defence, it was natural that they exaggerated in the direction of strictness, and overlooking somehow the scriptural teaching of Christian marriage they supported and stressed more the view that marital relations of Christians aim almost exclusively at procreation⁽²⁾.

1) Pospishil, Victor J. Divorce and Remarriage, London, 1967 p. 142

2) Athenagoras the Apologist in his Plea for Christians, P.G. 6, 965

Justin (139), who died as a martyr in Rome, wrote two apologies in defence of Christianity, in which he spoke of marriage. In his first Apology, addressed to the Emperor Antoninus Pius, his sons, the Senate, and the whole people of Rome, he states :

" But that we should not seem to be reasoning sophistically, we consider it right, before proceeding to proof, to call to mind a few precepts given by Christ Himself. And let it be your part, as powerful kings, to seek whether we have been taught and do teach these matters truly. Brief and concise words were spoken by Him, for He was not a sophist, but His word was the power of God"(1).

The challenge of inquiry shows that the statements were not a matter of Justin Martyr's private opinion, but of the known teaching of the Church. He continues :

" Whosoever looked on a woman to lust after her, has already committed adultery in his heart in the sight of God... He who marries a woman put away from another man, commits adultery... So then both those who commit bigamy under the sanction of the law of man, are sinners in the eyes of our Master, and those who look on a woman to lust after her(2).

1) " Ινα δε μη σοφίζεσθαι υμας δοξωμεν, ολιγων τινων των παρ'αυτου του χριστου υδαγματων επιμνησθηται καλωσ εχειν προ της αποδειξεως ηγησαμεθα, και υμετερων εστω, ως δυνατων βασιλεων, εξετάσαι ει αληθως ταυτα δεδιδάγμεθα και διδάσκομεν. βραχεϊς δε και σύντομοι παρ'αυτου λόγοι γεγνασιν. ου γαρ σοφιστής υπήρχεν, αλλά δύναμις θεου ο λόγος αυτου ην" APOLOGY I, 14 P.G. 6, 349

2) " "Ος εμβλέψη γυναικι προς το επιθυμῆσαι αυτης, ἤδη ἐμοίχευσε τῆ καρδίᾳ παρὰ τῷ θεῷ..." "Ος γαμῆ ἀπολελυμένην ἀφ'έτερου ἀνδρός μοιχᾶται..." "Ὡσπερ και οί νόμοι ἀνθρωπίνω διαγαμίας ποιούμενοι, ἀμαρτωλοὶ παρὰ τῷ ἡμετέρῳ Διδασκάλῳ εἰσὶ, και οί προσβλέποντες γυναικι προς το ἐπιθυμῆσαι αυτης" ibid. P.G. 6, 349

In his second Apology Justin Martyr gives the case of a dissolution of marriage which seems, according to the opinion of many, to refer not to divorce, but to simple separation⁽¹⁾. Although a second marriage was **seemed** excluded, the explanation that it is the case of a simple separation from bed and board must be rejected since, this legal institution was not known to any legislation of the time⁽²⁾.

Similar line of argument was followed also by the Apologist Athenagoras (177) in his Plea (or Legatio) "to the Emperors, Marcus Aurelius Antoninus and Lucius Aurelius Commodus, conquerors of Armenia and Sarmatia". Speaking about the idea of Christian marriage he stated :

" Having the hope of eternal life we despise the things of this life, even the pleasures of the soul, every one of us considers as his the woman whom he married according to your laws, and that only for the purpose of having children. For as the husbandman throwing seed into the ground awaits the harvest, not sowing more upon it, so to us the procreation of children is the measure of our indulgence in appetite"⁽³⁾.

After the Apologists Clement of Alexandria who lived by the end of the second century, defended marriage against all attempts of the Gnostics to discredit and reject it.

1) " ὅπως μὴ κοινωνῶς τῶν ἀδικημάτων καὶ ἀσεβημάτων γένηται, μένουσα ἐν τῇ συζυγίᾳ, καὶ ὁμοδαίτος καὶ ὁμοκοίτος γινομένη, τὸ λεγόμενον, παρ' ὑμῖν ρεπούδιον δοῦσα ἐχωρίσθη", Apology 2,2; P.G. 6, 444f

2) Pospishil, op. cit. p. 141

3) Apology c. 33; P.G. 6, 965f; But concerning any second marriage he says "who rids himself of his first wife, although she is dead, is an adulterer in a certain disguised manner"

" ἢ οἷος τις ἐτέχθη, μένειν, ἢ ἐφ' ἐνὶ γάμῳ, ὁ γὰρ δεύτερος εὐπρεπῆς ἐστὶ μοιχεία" Leg. 33, 2 ; P.G. 6, 965 A

He not only recommends marriage for moral reasons, he goes so far as to regard it a duty for the welfare of the country, for the succession of children and for the perfection of the world :

" Therefore we must by all means marry, both for our country's sake, for the succession of children, and as far as we are concerned for the perfection of the world; since the poets also pity a marriage half-perfect and childless, but pronounce the fruitful one happy"(1).

But on another occasion Clement elevates marriage to a much higher level, to an act of cooperation with the Creator "Thus man becomes an image of God in so far as man cooperates in the creation of man"(2). But the procreation of children is not the only purpose of marriage. The mutual love, and the assistance and help extended to each other unite them in a bond which is eternal(3). Thus Clement puts marriage higher than a sexual union; it is a spiritual and religious union between husband and wife, so that he avers : "Sacred is the state of matrimony"(4).

1) " καί τῆς πατρίδος ἕνεκα καί τῆς τῶν παιδῶν διαδοχῆς, καί τῆς τοῦ κόσμου, τό ὅσον ἐφ' ἡμῖν συντελειώσεως" Στρωμματεῖς Β' 23, 40 P.G. 8, 1089 B.

2) Παιδαγωγός Β ΙΟ, 83 " τοῖς δέ γεγαμηκόσι σκοπός ἡ παιδοποιία, τέλος δέ ἡ εὐτεκνία", P.G. 8, 497 A; Στρωμματεῖς Γ' II, 71 " ταῖς γαμεταῖς χρῆσθαι τοῖς ἀνδράσιν ... ἐπὶ μόνῃ παιδοποιίᾳ" P.G. 8, 1172

3) Στρωμματεῖς Γ ΙΟ, 68

4) Στρωμματεῖς Γ' Ι2, 84

Tertullian (193-220) was another great writer of the Catholic Church, who also wrote about marriage. But his evidence seems to be questioned by some scholars⁽¹⁾ on the ground that it claimed to prove that marriage after divorce is permissible, and also because eventually he became an adherent of the rigorist sect of Montanists, who among other exaggerations forbade all second marriages.⁽²⁾ But it was before he left the unity of the Church that he affirmed in his book "Against Marcion" the permissibility of divorce by saying that the justification of divorce has even Christ as defender⁽³⁾. He claimed that there is no discrepancy between Moses and Jesus on this account, but he denied that Jesus permitted divorce if a husband dismisses his wife in order to be able to marry another; the only valid reason for divorce is adultery⁽⁴⁾. Later, as a Montanist, he considered all second marriages, even of widowed persons, unlawful, and it cannot be expected from him that he would approve of divorce with the right of remarriage for any reason whatever⁽⁵⁾. A most beautiful concept of marriage is found in his Letter to his wife, giving her a legacy if he dies, not to marry again. But if she may not wish to stay single after his death, he begs her to make certain that she chooses a Christian. He praises the happiness of

1) H.J. Wilkins, op. cit. p. 57

2) Pospishil, op. cit. pp. 143-144

3) P.L. 2, 473f

4) P.L. 1, 1289

5) P.L. 13, 1231 ff

Christian marriage as follows :

" How beautiful then, the marriage of two christians, two who are one in hope, one in desire, one in the way of life they follow, one in the religion they practice. They are as brother and sister, both servants of the same Master. Nothing divides them, either in flesh or in spirit. They are in very truth, two in one flesh, and where there is but one flesh there is also but one spirit. They pray together; they worship together; they fast together; instructing one another, encouraging one another, strengthening one another. Side by side they visit God's Church and partake of God's banquet; side by side they face difficulties and persecutions and share their consolations. They have no secrets from one another; they never shun each other's company; they never bring sorrow to each other's hearts. Psalms and hymns they sing to one another, striving to see which one of them will chant more beautifully the praises of their Lord. Hearing and seeing this, Christ rejoices. To such as these He gives His peace. Where there are two together, there also He is present, and where He is, there evil is not"(1).

Origen of Alexandria (183-254) in his commentary on Matthew's Gospel ch. xix reported on a tradition lenient towards divorce, already established in his time. He suggested that the original marriage at the creation of Eve is a symbol of the marriage between Christ and the Synagogue. Since the Synagogue deserted Jesus, and even contributed to His death, he repudiated her, and took another spouse, the Church. In doing this He remained faithful to the decree of the Father "what God has joined together, let no man put asunder" because there is one exception to this seemingly absolute prohibition of divorce, namely, the clause in Matthew 19,9 "except for unchastity"(2). From this comparison it is apparent that

1) Tertullian, To his Wife, 2, 8 P.L. 1, 1299

2) Origen, Commentary on Matthew's Gospel, ch. xix P.G.17,289 cf. Pospishil pp. 144-146

Origen regarded divorce and remarriage as permissible. As Moses took cognizance of the "hardness of heart" among his people and permitted them to repudiate their wives, so also did Paul when he manifested a like condescension by permitting second marriages to all except the clergy⁽¹⁾.

Origen then passed to a particular case :

" Even now, acting outside the Holy Scripture, some superiors of the Church, have permitted to a woman to remarry while her husband is alive; they act most assuredly outside of Holy Scripture in which we read "the wife is bound for her lifetime to her husband" and "the wife will be considered adulterous if she, during the lifetime of her husband, joins up with another man". Yet, they did not act without reason because, so it seems, they have accorded condescension outside of what had been prescribed and transmitted in order to prevent worse consequences"⁽²⁾.

From the above evidence it seems that Origen was a witness to an established ecclesiastical practice of indulgence, which although opposed to the text of Holy Scripture, he justified it by the authority of merciful condescension possessed by the Church in the same manner as it had been exercised by Moses in the Old Testament⁽³⁾.

1) ibid. P.G.17, 289 cf Pospishill, op. cit. p. 146

2) " Ἡδὲ παρὰ γεγραμμένα καὶ τινες τῶν ἡγουμένων τῆς Ἐκκλησίας ἐπέτρεψάν τινα, ὥστε ζῶντος τοῦ ἀνδρός, γαμεῖσθαι γυναῖκα, παρὰ τὸ γεγραμμένον μὲν ποιοῦντες ἐν ᾧ λέλε- κται· "Γυνὴ δὲ ἐφ' ὅσον χρόνον ζῆ ὁ ἀνὴρ αὐτῆς" καὶ τὸ "Ἄρα οὖν μοιχαλῆς χρηματίζει ἡ γυνὴ γενομένη ἀνδρὶ ἑτέρῳ ζῶντος τοῦ ἀνδρός", οὐ μὴν πάντῃ ἀλόγως· εἰκόσ γάρ τὴν συμπεριφορὰν ταύτην συγκρίσει χειρόνων ἐπιτρέπεσθαι παρὰ τὰ ἀπ' ἀρχῆς νενομοθετημένα καὶ γεγραμμένα", ibid. P.G. 17, 289

3) Pospishil, op. cit. p. 146 see also Appendix I "The notion of Economy in the Greek Orthodox Church, p. 283

St. Cyprian, Bishop of Carthage, (200-258), writing to his son, Quirinus, stated that :

(1) P.L. 6, 1080

" a wife ought not to depart from her husband, or if she should depart, to remain unmarried"(1).

This passage, as V.J. Pospishil comments, was clearly directed against unjustified divorce, that is one in which there is no question of adultery. It also forbids the remarriage of the wife, but does not mention the husband, a quite unexpected omission at a point where it would have been anticipated that Cyprian say something about the innocent husband's remarriage, either permitting or forbidding it. It cannot, therefore, be deduced from this passage that St. Cyprian considered the remarriage of an innocent husband invalid⁽²⁾.

(2) Pospishil,
op. cit. pp 146-147

Such then was the teaching on marriage and divorce of the ante-Nicene Church, based on the writings of some of the most representative Apologists and ecclesiastical Fathers and writers of that time. The Apologists, being in the defence against serious accusations, it was natural for them to exaggerate in the direction of strictness. Their line of argument is understandable if one considers that their accusers were pagans, who, in any case, could not have understood the connection of marriage with the Eucharist and the union of Christ with His Church. Nevertheless there is ample evidence in the latter Fathers and writers of a deeper theological and sacramental content of Christian marriage and of a certain tradition of leniency towards divorce, which was already established and exercised by the authority of merciful condescension possessed by the Church.

d. Marriage in the post-Nicene and Byzantine era

The law of marriage and divorce during this period could be traced in the relative pronouncements of the Local & General Councils and the various sentences of the Fathers on matrimonial matters, which were confirmed as canons by the Quinisext Council of Troullo (691-692)⁽¹⁾ (961-962)⁽¹⁾ and also in the various enactments, Novels and legislations of the Byzantine Emperors⁽²⁾.

As already has been mentioned, both at the time of persecution by and during her alliance with the Roman State, the Church was obliged to conform with the civil legislation regulating marriage. Even when Christianity became the prevailing State religion there was a wise reluctance from the part of the Church to force a conflict; not that the Church was indifferent to the issue of marriage or that she had no specific point of view but because as St. John Chrysostom explains it :

" The Kings pronounce the laws which often are not all usefull, but we obey them. In the question of marriage, in matters of wills, we do not react following our proper judgement; but besides the royal orders we are constantly submitted to their decisions and if we react against their dispositions, our action will be null and in vain"⁽³⁾

1) Hamilcar Alivisatos, Holy Canons and Ecclesiastical Laws, 2nd ed. Athens, 1949 of General Councils pp. 26-133; of Local Councils pp. 322-483; of the Fathers pp. 134-321

'Αμίλικα 'Αλιβιζάτου, Οἱ Ἱεροὶ Κανόνες καὶ οἱ Ἐκκλησιαστικοὶ Νόμοι, ἔκδοσις β' Ἀθῆναι 1948
2) Codex Theodosianus (439); Justinian's a) Institutions (533) b) Digests or Pandecte (533); c) Codex Justinianus (534); d) Novels; Leo 3rd Isaurus and Constantine 5th Eclogae (741); Basil's 1st the Macedonian and his sons' Leo and Alexander a) Prochiros Nomos or Procheiron (878) b) Epanagoge (884); Basil's 1st the Macedonian and Leo's 6th the Wise "Vassilika"
3) John Chrysostom, Ad pop. Antiocheanum, Homily XVI, 2 P.G. 49, 164

During the period between Constantine and Justinian mutual consent was all that was as a rule necessary under the Civil Law for a divorce with power of re-marriage; and a study of the laws of Constantine, Honorius, Theodosius and Valentinian will show how far they were from the Christian standard⁽¹⁾. This is evident also from the writings of many Fathers of that time. For example, St. Gregory of Nazianzus in one of his sermons he notes the difference in treatment of the wife and of the husband; the difference between the teaching of the Church and the laws and customs prevalent :

" A wife plotting evil round the bed of her husband commits adultery, and sharp thence are the penalties of the law. But is a man, committing adultery against his wife, guiltless ? I do not hold this law; I praise not this custom. Husbands were the makers of the law, therefore the law is against the wives"(2)

He is clear that only adultery, because of confusio prolis, can be a ground of divorce; all else must be patiently endured :

" the law grants divorce for every cause. But Christ not for every cause: rather He allows separation only for adultery, all other things He commanded men to endure patiently. And He allows adultery because it makes spurious the offspring"(3).

1) Wilkins, op. cit. p. 69

2) " καὶ γυνὴ μὲν κακῶς βουλευσαμένη περὶ κοίτην ἀνδρός μοιχᾶται, καὶ πικρὰ ἐντεῦθεν τὰ τῶν νόμων ἐπιτίμια· ἀνὴρ δὲ καταπορνεύων γυναικός, ἀνεύθυνος ; Οὐ δέχομαι ταύτην τὴν νομοθεσίαν, οὐκ ἐπαινῶ τὴν συνήθειαν. "Ἄνδρες ἦσαν οἱ νομοθετοῦντες, διὰ τοῦτο κατὰ γυναικῶν ἡ νομοθεσία", Oratio xxxvii P.G. 35, 396 ff It is worth noting that this sermon was delivered before the Emperor Theodosius at Constantinople, see Wilkins, op. cit. p. 80

3) " ὁ μὲν νόμος κατὰ πᾶσαν αἰτίαν τὸ ἀποστάσιον δίδωσι· Χριστός δὲ οὐ κατὰ πᾶσαν αἰτίαν· ἀλλὰ συγχωρεῖ μὲν μόνον χωρίζεσθαι τῆς πόρνης, τὰ δὲ ἄλλα πάντα φιλοσοφεῖν κελεύει. Καὶ τὴν πόρνην, ὅτι νοθεύει τὸ γένος" ibid. P.G.35,396

St. Gregory of Nazianzus goes on to urge the utmost care before divorce, "do not cut off rashly, do not separate"(1).

Another Father of the Church, St. Asterius, who lived by the end of the fourth century gives a very unpleasant picture of the life of certain Christians of his time, who acted according to the Civil Law :

" But hear now, ye hucksters, of such marriages and who as easily assume your wives, as you put on clothes; ... believe that marriage is severed by death alone and by adultery;... I praise the husband who flies from the designing wife, who cuts asunder the bond by which he is bound to the asp or the viper"(2).

As regards, therefore, divorce and re-marriage "it appears that during the two centuries between Constantine and Justinian the legislation of the State relative to the vital question of divorce is practically untouched by the influence of Christianity. In formal divorce bona gratia and divorce by mutual consent, both contrary to Christian teaching, are freely allowed. The principle of further marriage after separation is fully maintained for the innocent party, and usually under restrictions for the guilty person as well. The causes of legal divorce are, indeed, limited, and the penalties for unjust repudiation made more severe; but the strict principle of indissolubility of the marriage bond ... is completely ignored"(3).

1) * Μὴ τέμης δὲ προπετῶς, μὴ χωρίσης" ibid. P.G. 35, 396ff

2) " ἀκούσατε δὲ νῦν, οἱ τοῦτων κάπηλοι, καὶ τὰς γυναῖκας, ὡς ἰμάτια, εὐκόλως μετενδυόμενοι· ... πείσθητε, ὅτι γάμος θανάτῳ μόνῳ καὶ μοιχείᾳ διακόπτεται· ... ἐπαινῶν τὸν φυγόντα τὴν ἐπίβουλον, τὸν διακόφαντα τὸν δεσμὸν, ᾧ πρὸς τὴν ἐσπίδα ἢ τὴν ἔχιδραν προσεδέδετο" Fifth Homily on Matthew xix , P.G. 40, 164 ff

3) Howard, G.E. A History of Matrimonial Institutions, Chicago and London, 1904 vol.II p. 31; cf Wilkins op. cit.p.69

Under the Justinian's law the constructive factor of marriage lay only in the mutual consent of the parties who were to marry :

" Marriage is effected by mutual agreement and does not require besides this any deed fixing the dowry"(1).

This mutual agreement was made public in three different ways according to the three classes into which the citizens were divided :

- 1) those who were of a high class,
- 2) those who were of a middle class, and
- 3) those who were of a low class (2)

When people of the high class wanted to marry it was required of them to sign the so called formal marriage settlement⁽³⁾. Those of the second class were allowed to marry without any written agreement, but they had to have their marriage attested by an official of a Church in the presence of three or four witnesses and their marriage should be registered in its archives⁽⁴⁾. The third class were free to marry without any such formality⁽⁵⁾. The only common element required in all three cases was just the mutual consent of the parties concerned to take each other as husband and wife.

The proper age for marriage in Justinian's law was the fourteenth year for the man and the twelfth year for the woman⁽⁶⁾. When parents realised that their children

1) Joyce, op. cit. pp. 196-197

2) Phedon Koukoules, Life and Civilisation of the Byzantines, vol. 4 The Marriage, Athens 1951 pp. 70-147(in Greek)

Φαίδωνος Κουκουλέ, Βυζαντινῶν Βίος καὶ Πολιτισμὸς, τ. Δ' Ὁ Γάμος, Ἀθήναι 1951, σσ. 70-147

3) ibid. cf Joyce, op. cit. pp. 196-197

4) Koukoules, op. cit. p. 98; Joyce, op. cit. p. 196

5) ibid. p. 197; Koukoules, op. cit. p. 98

6) ibid. p. 76

had reached the age of marriage, they were then taking care for their marriage by choosing the bride or bridegroom and arranging about the marriage with their future in-laws⁽¹⁾. For this purpose also it was usual to employ the help and services of friends or relatives or even special people who were known as matchmakers or mediators⁽²⁾.

(2) St. John Chrysostom
P.G. 51, 233, 253;
61, 117.

By the beginning of the ninth century the Church's blessing of marriage received the Imperial sanction and was put on an equal status with the simple contract of marriage⁽³⁾. This Church blessing was declared to be indispensable and it was required not as the essential element of marriage but as the necessary legal formality⁽⁴⁾.

Cf. Koukoules,
op. cit. pp.
75ff.

1) ibid. p. 78 Though age limits were required for contracting a marriage, the case was different for espousals. For political or social reasons or for the sake of inheritance, very often parents used to arrange espousals, as also the romans did, from the very early age of their children, writing contracts of future marriage and offering or receiving dowry deposits (Digest titl. 1, 1 - where also a fine was prescribed in case of breach; Ph. Koukoules, op. cit. p. 78). According to the old laws such espousals could take place at the age of seven (Digests 23, 1, 14; Novel 109 of Leo the Wise P.G. 107, 640; Constantine Porphyrogenitos' Digest of Laws P.G. 113, 492) A decree by Emperor Alexios Comninos (1107) commenting on such arrangements stated "not that they form complete espousals, but that they only strengthen the promise of espousals" Ph. Koukoules, ibid. p. 78 References about such arrangements were also made by Symeon of Thessaloniki, On the Sacred legal Marriage, P.G. 155, 505, and about the matchmakers by St. John Chrysostom, P.G. 51, 233; 61, 117; 51, 253. Parents then, at that time, had full powers regarding their children's marriage, unless they had been formally or at least practically emancipated. If however the father refused his consent unreasonably, an appeal was possible to the civil courts and his refusal could be set aside. Ph. Koukoules, ibid. p. 75; cf Joyce, op. cit. p. 75

3) Eighty-ninth Novel of Emperor Leo VI P.G. 107, 601 Koukoules, op. cit. p. 93

4) ibid. p. 93

Such was the legal status of ecclesiastical marriage that, where slaves were concerned it was often impossible to take place, since the masters feared that the Church's blessing might be used as a ground by the slaves for a claim of freedom⁽¹⁾. The matter was finally settled by Emperor Alexios Comninos (1048-1118), who issued a decree in 1095 forbidding that slaves should be barred from ecclesiastical marriage⁽²⁾.

In Justinian's law there is no hint about the indissolubility of marriage. His legislation was utterly at variance with the Church's teaching and divorce was granted on several grounds which at first were as follows :

- 1) treason against the Emperor,
- 2) adultery of the wife, whereas adultery on the part of the husband did not give the wife a claim; but if he intended to lead her to commit adultery she could divorce him,
- 3) if either party plots against the life of the other or knowing the intention of a third person to take the partner's life, fails to make it known,
- 4) if the wife feasts with other men without her husband's knowledge or frequents the baths with them; if she passes the night away from the house of her husband, except it be the house of her own parents; or again if she frequents theatres or racing games without the knowledge or against the will of her husband,
- 5) if the husband should accuse his wife of adultery and fails to substantiate the charge, she is free to divorce him. So too, if he lives in notorious concubinage with another woman and does not cease, even after being twice admonished by the parents of his wife or by some other person of credit⁽³⁾

1) Eclogia I, 1; Vassilika II, 3 cf Zhishman Jos. The Law of Marriage of the Eastern Orthodox Church, vol. I p. 295 Athens, 1912-1913 (in Greek) Ζίσμαν 'Ιωσ." Τὸ δίκαιον τοῦ γάμου τῆς Ἀνατολικῆς Ὀρθοδόξου Ἐκκλησίας, τόμοι Α - Β, Ἀθήναι 1912-1913

2) ibid. p. 295 cf Corbett, op. cit. p. 241ff

3) Zhishman, ibid. vol. II pp. 755-801; Corbett, ibid. pp. 241ff

These grounds were enforced in 536 A.D. and six years later three more were added by Justinian's Novel 117 :

- 1) entry into religion,
- 2) impotency,
- 3) captivity⁽¹⁾.

The same Novel abolished divorce by mutual consent, which until then was possible through previous legislation; but this abolition caused much dissatisfaction and Justinian's son and successor Justin II was obliged to repeal his father's enactment⁽²⁾ and for nearly two hundred years divorce by consent was permitted under Byzantine rule⁽³⁾.

Most of these grounds were directly violating the Christian teaching of indissolubility and the discipline of the Church, which on the basis of the Matthean exception very reluctantly accepted only one ground for divorce. This teaching of the Church was expressed in the writings of various Fathers amongst whom St. John Chrysostom (347) allows separation for adultery :

"Whoever puts away his wife, except for the cause of fornication, makes her to commit adultery"⁽⁴⁾.

But there is no dissolution of the marriage bond or remarriage⁽⁵⁾. St. Chrysostom repeatedly uses the phrase

1) Novel 117 (542); Zhishman, op. cit. pp. 808 ff; Corbett, op. cit. pp. 247 ff

2) Novel 140 (566) Zhishman, op. cit. vol. I pp. 195ff

3) Joyce, op. cit. p. 370

4) "Τὸ γὰρ, "Ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, παρεκτός λόγου πορνείας, ποιεῖ αὐτὴν μοιχᾶσθαι." De Virginitate, 28, P.G. 59, 527; cf Wilkins, op. cit. p. 82

5) "Ὁ δὲ ἀνὴρ, κἂν τὴν ἀπάντων ἀργαλεωτέραν ἔχῃ γυναῖκα, στέργειαν ἀναγκάζεται τὴν δουλείαν, καὶ λύσει οὐδεμίαν, οὐδέ διεξοδὸν ταύτης οὐναται τῆς δεσποτείας εὐρεῖν", ibid.

P.G. 59, 527

" let her remain unmarried or be reconciled to her husband" (1).

Also when commenting on Matthew v. 31, 32 St. Chrysostom states of the woman cast out :

" for when cast out she continues to be the wife of him that expelled her"(2).

St. Basil (360) too allowed separation to the wife as well as to the husband on the ground of adultery or hindrance to spiritual life :

" the husband ought not to be separated from his wife, or the wife from the husband, unless one be taken in adultery or hindered in piety"(3).

St. Basil feels uncomfortable of the customary practice, prevalent at his time and even in the Church, which treats the wife with greater strictness than the husband⁽⁴⁾. According to this laxity of practice :

" husbands, even when committing adulteries and are living in fornication, should be retained by their wives"(5), but

" if a husband is left by the wife, he is pardoned and she who dwells with such a man is not condemned"(6).

1) " Μενέτω γάρ, φησίν, ἄγαμος, ἢ τῷ ἀνδρὶ καταλλαγήτω"
De Virginitate, P.G. 59, 527 ff @ 40

2) " Καὶ γὰρ ἐκβληθεῖσα μένει τοῦ ἐκβάλλοντος οὕσα γυνή"
Wilkins, op. cit. p. 83

3) " Ὅτι οὐ δεῖ ἀνδρα ἀπὸ γυναικὸς ἢ γυναῖκα ἀπὸ ἀνδρὸς χωρίζεσθαι, εἰ μὴ τις ἂν ἐπὶ πορνείᾳ ἀλφῆ ἢ εἰς τὴν θεοσεβειαν κωλύηται" Moralia Reg. 73, c. 1 P.G. 31, 692ff;
Wilkins, ibid. p. 77

4) Wilkins, ibid. p. 78

5) " Ἡ δὲ συνήθεια καὶ μοιχεύοντας ἄνδρας καὶ ἐν πορνείαις ὄντας κατέχεσθαι ὑπὸ γυναικῶν προστάσσει" Letter 188
(Canon 9) cf Wilkins, op. cit. p. 78

6) " Ὁ δὲ καταλειφθεὶς συγγνωστός ἐστι, καὶ ἡ συνοικοῦσα τῷ τοιοῦτῳ οὐ κατακρίνεται" Canon 9 cf Alivisatos, op. cit. p. 361

However, for those who violated the Church rule not to re-marry after separation, St. Basil sanctions the following penance :

" If anyone foresakes his wife and marries another, he shall remain for a year in the lowest, two years in the second, three in the third, and one year in the fourth grade of penitence"(1).

This Canon of St. Basil was later sanctioned by the Quinisext General Council in Troullo (692)(2). One of the early Fathers who explicitly accepts divorce with the right of re-marriage is Epiphanius (402), Bishop of Salamis in Cyprus, according to whom :

" whoever is unable to be satisfied with one wife after she is dead, or separation having taken place on account of some pretext, fornication, adultery, or evil cause, if he is joined to a second wife or a wife to a second husband, the Divine word does not accuse him nor excommunicate him from the Church and from life; but bears with him because of his infirmity; not that he may have two wives together, the first still surviving; but separated from the one if it should happen, he should be lawfully joined to the second. This man the Holy Word pities and the holy Church of God; especially if such a man is pious as regards the other things and lives according to the law of God"(3).

1) "Ο μέντοι καταλιμπάνων τήν νομίμως αὐτῷ συναφθεῖσαν γυναῖκα, καί ἑτέραν ἀγόμενος, ... ἐνιαυτόν προσκλαλεῖν, διετίαν ἐπακροῶσθαι, τριετίαν ὑποπίπτειν, τῷ δέ ἐβδόμῳ συνλιστασθαι τοῖς πιστοῖς, καί οὕτω τῆς προσφορᾶς καταξιουῶσθαι, ἐάν μετὰ δαιρῶν μετανοήσῃ" Canon 77, Alivisatos, op. cit. p. 382

2) Canon 87 of Troullo, Alivisatos, ibid. p. 111

3) " ὁ δέ μή δυνηθεῖς τῇ μιᾷ ἀρκεσθῆναι τελευτησάσῃ ἢ ἔνεκεν τινος προφάσεως πορνείας ἢ μοιχείας ἢ κακῆς αἰτίας χωρισμοῦ γενομένου, δυναφθέντα δευτέρα γυναίκε, ἢ γυνή δευτέρῳ ἀνδρὶ, οὐκ αἰτιᾶται ὁ θεῖος λόγος, οὐδέ ἀπό τῆς Ἐκκλησίας καί τῆς ζωῆς ἀποκηρύττει, ἀλλά διαβαστάζει· διὰ τὸ ἀσθενές· οὐχ ἵνα ὄνο γυναῖκας ἐπὶ τὸ αὐτὸ σχῆ ἔτι περιούσης τῆς μιᾶς, ἀλλ' ἀπὸ μιᾶς ἀποσχεθεῖς, δευτέρα, εἰ τύχοιεν, νόμῳ συναφθῆναι. Ἐλεεῖ τοῦτον ὁ ἅγιος λόγος καί ἡ ἅγια θεοῦ Ἐκκλησία· μέλιστα εἰ τυγχάνει ὁ τοιοῦτος τὰ ἄλλα εὐλαβῆς, καί κατὰ νόμον θεοῦ πολιτευόμενος" ; Panarion lix, cap. 4; Wilkins, op. cit. pp.79-80

Justinian's legislation on divorce, which was included in his 117th Novel was eventually treated as a rule for the practice of the Church. Evidence for this is given by two of the greatest canonists, who flourished at the end of the 12th century, Valsamon and Zonaras, who explicitly stated that St. Basil's 9th Canon concerning the indissolubility of marriage no longer held good in view of the changes made by Justinian's law⁽¹⁾.

The grounds for divorce were gradually extended and before the fall of the Byzantine Empire (1453) to the already mentioned grounds the following were also added :

- 1) insanity,
- 2) abortion,
- 3) prenuptial unchastity on the part of the wife,
- 4) unnatural vice on the part of the husband,
- 5) implacable hatred on both sides, rendering conjugal life impossible,
- 6) apostasy from the Christian religion or entry into an heretical sect⁽²⁾.

Most of these grounds were directly violating the Christian principle of the indissolubility of marriage. The Church, despite her reaction by means of protests and direct opposition, could do nothing but yield to the influence of the State and accept its law in her practice⁽³⁾.

1) Valsamon and Zonaras' Commentaries on St. Basil's 9th Canon, P.G. 138, 622ff

2) Zhishman, op. cit. vol. II pp.755-882; cf Joyce, op. cit. pp. 377-8

3) ibid. p. 377-8; see also chapter 3 of Part II p. 208f

There were cases, however, where the Church refused to compromise her position, took appropriate action and led the State to legislate in favour of her position. The case of consanguinity is such an example. The Church abhorred the mixture of the same blood and therefore she objected to permission been given for the marriage of first cousins, which was allowed by the Emperor Arcadius (405) whose law was incorporated in Justinian's Code⁽¹⁾. The Church had no power to dispute the legal validity of such unions, but she had the power to subject those who entered them to penance by refusing them the sacraments for a period varying from five to ten years⁽²⁾. Eventually, the Byzantine Emperors came to favour the Church's doctrine and thus Leo III (740) forbade the marriage between second cousins⁽³⁾.

An important turning point for the Orthodox Church with regard to marriage was the Quinisext Council in Troullo (692). Contrary to a widespread practice of previous ages that Council ruled that candidates for Holy Orders should not be debarred from the use of marriage, though they were forbidden to marry after ordination⁽⁴⁾.

1) Mellissinou Christodoulou, Impediments to Marriage in the Eastern Orthodox Church, Constantinople, 1889, p. 61 (in Greek)

Μελισσηνου Χριστοδούλου, Τὰ Κωλύματα τοῦ Γάμου ἐν τῇ Ἀνατολικῇ Ὁρθοδόξῳ Ἐκκλησίᾳ, Ἐν Κωνσταντινουπόλει, 1889

2) St. Basil's 77th Canon, Alivisatos, op. cit. p. 382

3) Eclogia 11, 2, Christodoulou, op. cit. p. 62; Leo's prohibition reappeared in the legislation of Basil the Macedonian (878) (Procheiron xxxix, 72), Christodoulou, ibid. p. 62; and later on was incorporated by Leo VI (884) in his Code Vassilika, lib. ix, titl. 37, c. 76; ibid. p. 62

4) Canon 6 Alivisatos, op. cit. p. 79; Bishops were forbidden to cohabit with their wives who were required to retire to a Monastery at some distance (Canon 48). If before ordination

The Council also established a rule of spiritual kinship by virtue of which a sponsor at baptism was forbidden to marry the mother of his god-child, such marriage being treated as void⁽¹⁾. Furthermore, extending the rules laid down by St. Basil the Great⁽²⁾ the Council of Troullo forbade marriages in the following cases of affinity :

- 1) of a person with his first cousin,
- 2) of father and son with mother and daughter,
- 3) of father and son with two sisters,
- 4) of two brothers with mother and daughter,
- 5) of two brothers with two sisters⁽³⁾.

The question over affinity saw further developments. In the year 997 a Synod was held in Constantinople under Patriarch Sisinius, which prohibited the marriage in the fifth degree of affinity, i.e. of an uncle and nephew with two sisters, or, an aunt and niece with two brothers. The same Synod also prohibited marriage in the sixth degree i.e. of two brothers or two sisters with two first cousins⁽⁴⁾.

a priest had contracted an unlawful marriage in good faith, he was suspended from exercising his office, and the marriage was dissolved (Canon 26), and a monk attempting marriage was to be treated as a fornicator(Canon 44) see Alivisatos, op. cit. pp. 79ff

- 1) Canon 53 Alivisatos, ibid. p. 99
- 2) Canon 68 concerning the condemnation of marriages between relations in the first and second degrees of affinity, i.e. between a man and his mother-in-law or sister-in-law, Alivisatos, ibid. 379
- 3) Canon 54, Alivisatos, ibid. pp. 99-100
- 4) Synodical Tome (997) P.G. 119, 727

This Synodical decree later received Imperial confirmation and so regarding affinity the cases forbidden were up to the sixth degree⁽¹⁾. By the beginning of the twelfth century the prohibition was extended to the seventh degree i.e. of mother and daughter with two second cousins⁽²⁾.

Another kind of relationship of affinity known in the Greek Orthodox Church was that which involved three families. According to the impediment of this kind a man could not marry the widow (or divorced) wife of his stepson; and similarly, a woman could not marry the man, who had been the husband of her step-daughter. This relationship was placed in the first degree but later on the impediment was extended up to the third degree⁽³⁾. Matthew Vlastaris, another Greek Canonist who lived in the fourteenth century (1335) says that consanguinity in his time was an impediment up to the seventh degree; affinity was an absolute bar to the fifth degree; and affinity of three families was an impediment up to the third degree inclusive⁽⁴⁾. The same Council of Troullo extended the prohibition of marriage with unbelievers⁽⁵⁾ to the case of heretics⁽⁶⁾, but the marriage of two unbelievers or of two heretics was to stand good after the conversion of one party, on the ground of St. Paul's saying that the unbelieving husband is sanctified by his wife⁽⁷⁾.

1) Zhishman, op. cit. pp. 612ff

2) Christodoulou, op. cit. p. 82

3) ibid. p. 154

4) P.G. 119, 1236

5) Canon 14, Fourth General Council (451) Alivisatos, ibid. p. 54

6) Canon 72, Alivisatos, ibid. p. 106

7) I Cor. 7, 12-16, Alivisatos, ibid. p. 106

The legislation of Justinian which was mainly the foundation of the later development of the Byzantine law had shown how far Christian doctrine could affect the law of the Empire, and left this sufficiently at variance with the Canons of the Church. There were, therefore, two poles governing the laws of marriage, sometimes perfectly distinct and sometimes contradictory which eventually became complementary. This is clearly illustrated by the comment of the twelfth century canonist Valsamon, on the 93rd Canon of the Quinisext Council :

" since, he says, the Canon and the laws thus differ one may ask which should be obeyed ? The answer is both. A woman who marries again before being certain of her husband's death, both Canons and laws call an adulteress. But if she is the wife of a soldier she may benefit by permission of the Canon to remarry only if she fulfils all the conditions for such a marriage laid down by the civil law"(1).

The Church, who originally had to make concessions in the long run was able to turn what was considered at first as a purely civil affair into an officially recognised religious and ecclesiastically controlled institution. In 1306 Andronicus the Elder, in conjunction with the Patriarch Athanasios forbade any contracting of marriage without the knowledge and intervention of the parish priest⁽²⁾. The Empire was now reduced within narrow bounds, but the influence of the Church extended far, and in this way was established an ecclesiastical control of marriage which survived the fall of the Byzantine Empire, to become the fixed rule of the Ottoman Empire for the members of the Orthodox Church. Ecclesiastical marriage was henceforth the only kind of marriage recognised as valid by the State.

1) Lacey, op. cit. p. 105

2) ibid. p. 105

PART I

1. The Law of Marriage and Divorce in England up to 1850

Before and up to 1850 the administration of the law concerning matters of marriage and divorce in England rested in the hands of the Church of England⁽¹⁾, and the law applied was founded mainly on the pre-Reformation Canon law of the Western Christendom⁽²⁾, which adhered to the concept of marriage as an indissoluble union dissolved only by death⁽³⁾.

With the Reformation in England came the repudiation of the claims of the Roman Church⁽⁴⁾. One immediate effect of this was the tightening of the marriage bond, in a way which had not been previously felt, owing to the widespread practice and system of dispensations "obtained by various fictions and devices which were a fruitful source of ecclesiastical revenue"⁽⁵⁾.

1) Report of the Royal Commission on Marriage and Divorce, London, 1956, p. 4; The Church and the Law of Nullity of Marriage, Report of a Commission appointed by the Archbishops of Canterbury and York, London, 1955, p. 17

2) Reginald Haw, The State of Matrimony, London S.P.C.K. 1952 p. 60

3) Wilkins op. cit. p. 129 where he says "whatever was the practice of Rome, the Church held to the indissolubility of marriage". It is perhaps worth noting here that the Roman Church considered the question of marriage at the Council of Trent (1545), according to which (Canon 7): " If any one shall say that the Church errs, when it taught and teaches according to the Evangelical and Apostolical doctrine that the bond of matrimony cannot be dissolved on account of the adultery of either of the spouses; and that both, or even the innocent, who has not given cause by adultery, cannot, so long as the other partner is alive, contract another marriage; and that he commits adultery who, his wife having been dismissed, has married another, and that she, who, her adulterous husband having been dismissed, has married another; let such one be accused (anathema), ibid. pp. 141-142

4) ibid. p. 145

5) ibid. p. 145

During the period after the Reformation the main authoritative formularies of the Church of England were the 1603 Canons and the Form of Solemnization of Matrimony in the 1662 Prayer Book⁽¹⁾, which could be considered as the official expressions of the Church's views on marriage and divorce at that time⁽²⁾.

The contents of the service testify that marriage is a divine institution which should not be dissolved⁽³⁾ and the very heart of the service is the exchange of vows between the parties, which involves a permanent union "until death us do part" and concludes with the solemn warning that "those whom God has joined together let no man put asunder"⁽⁴⁾.

Both Joyce⁽⁵⁾ and much more fully Winnett, document the position from the end of the sixteenth century :

" The Church of England officially was committed to the old standards of law and practice concerning marriage, but side by side with this the opinion held by many influential Churchmen that adultery dissolved the marriage bond and that the innocent husband was free to remarry, an opinion which in a number of instances found expression in practice" (by special Acts of Parliament)⁽⁶⁾

1) Apart from spelling and the giving of gold and silver with the ring the essentials in the Form of Solemnization of Matrimony in the 1662 Prayer Book remained unchanged from its previous editions of 1549 and 1552, Atkinson, op. cit. p. 59

2) Haw, op. cit. p. 60

3) Atkinson, ibid. p. 59

4) W.K. Lowther Clarke, Liturgy and Worship, London, S.P.C.K. 1950, p. 465

5) Joyce, op. cit. p. 421

6) A.R. Winnett, Divorce and Remarriage in Anglicanism, Macmillan, 1958, p. 55; see also The Church and Marriage, Report, 1935, op. cit. p. 15 and Atkinson, op. cit. p. 62

The law of the Church as set out in the Canons of 1603 allowed only separation or divorce a mensa et thoro, and prescribed that a bond must be taken in all sentences of such separation :

" that the parties, so separated, shall live chastely and continently, neither shall they, during each other's life, contract matrimony with any other person"(1).

It appears, therefore, as David Atkinson suggests, that "the Canons of 1603 were formulated as a need for disciplinary precaution in the light of frequent remarriages, rather than from the belief in the inherent indissolubility of the marriage bond"(2).

But before proceeding any further with the question of divorce and remarriage in the pre-1850 period, it would be necessary to give here very briefly a historical background relating to the formalities of marriage.

Until the middle of the eighteenth century a marriage could be contracted in one of the following three ways :

(a) In facie ecclesiae, after the publication of banns or upon a licence before witnesses, and with the consent of the parent or guardian of a party who was a minor. Such a marriage was obviously valid for all purposes⁽³⁾.

(b) Clandestinely, per verba de praesenti before a clerk in holy orders, but not in facie ecclesiae. This was as valid as if it had been solemnised in facie ecclesiae⁽⁴⁾.

1) The Church and Marriage, Report, 1935, op. cit. p. 16; Atkinson, op. cit. p. 62

2) Atkinson, ibid. p. 62

3) P.M. Bromley, Family Law, London, 1976, p. 34; Lacey, op. cit. pp. 138ff

4) Bromley, ibid. p. 34; Lacey, ibid. p. 166

(c) Per verba de presenti or per verba de futuro with subsequent sexual intercourse, but where the words were not spoken in the presence of an ordained priest or deacon. Whilst such a marriage seemed not to produce all the legal effects of common law, it was nevertheless considered as valid for many purposes. Such a union was indissoluble, so that, if either party to it subsequently married another, the later marriage could be annulled. Moreover either party could obtain an order from an ecclesiastical court calling upon the other to solemnize the marriage in facie ecclesiae⁽¹⁾.

It was not surprising that the common law favoured the publicity of marriage in facie ecclesiae, for upon the existence of the union might depend many property rights and the identity of the heir at law. Consequently, there developed a rule that the wife was not dowable unless she was endowed at the Church door⁽²⁾. But in the course of time, it seems, the reason for the common law insistence upon such a marriage was neglected. Neither the publishing of banns nor the presence of any other witness was any longer considered necessary;⁽³⁾ only the presence of a priest (or, after the Reformation, a clerk in holy orders) came to be required, so that eventually the rule was laid down

1) Bromley, op. cit. 33; Haw, op. cit. pp. 33-34
Lacey, op. cit. p. 148

2) Bromley, ibid. p. 33; Haw, ibid. p. 144

3) Bromley, ibid. p. 33; Lacey, ibid. p. 148

that a valid marriage at common law could be contracted only per verba de praesenti exchanged in his presence⁽¹⁾. It was natural that from such a state of affairs a large number of social evils would result. A person who had believed himself to be validly married for years would suddenly find that his marriage was a nullity because of a previous clandestine or irregular union, the existence of which he had never before suspected. Children would marry without their parents' consent, and if the minor was a girl with a large fortune, the old common law rule that a wife's property vested in her husband on marriage made her a particularly attractive catch⁽²⁾. Clergy who traded in clandestine marriages and were known as "the Fleet parsons" were thriving⁽³⁾. By the middle of the eighteenth century things were so much out of control that there was danger that such marriages would become the rule rather than the exception⁽⁴⁾.

It was to stop these abuses that Lord Hardwicke's Act was passed in 1753. To secure publicity this Act enacted that no marriage should be valid unless it was solemnized according to the rites of the Church of England in the Parish Church of one of the parties in the presence

1) Bromley, op. cit. p. 34; Lacey, op. cit. p. 166

2) Bromley, ibid. p. 34

3) Haw, op. cit. pp. 144-148

4) Bromley, ibid. p. 34

of a clergyman and two other witnesses⁽¹⁾. Unless a licence had been obtained, banns had to be published in the Parish Churches of both parties for three Sundays. If either party was under the age of 21, parental consent had to be obtained as well, unless this was impossible to obtain or was unreasonably withheld, in which case the consent of the Lord Chancellor had to be obtained. If these provisions were not observed, the marriage would be null and void, though by the Church's law they were irregular but not invalid⁽²⁾.

Lord Hardwicke's Act put a stop to clandestine marriages in England, but it caused an almost greater social evil. Many couples deliberately evaded the law by getting married in Scotland. This was particularly the case when one of the parties was a minor and parental consent was withheld⁽³⁾. In an attempt to prevent this Lord Hardwicke's Act was amended and replaced by a new Marriage Act of 1823⁽⁴⁾. According to this Act a marriage was to be void only if both parties knowingly and wilfully intermarried in any other place than the Church wherein the banns might be published, or without the due publication of banns or the obtaining of a licence, or if they knowingly and wilfully consented to the solemnization of the marriage by a person not in holy orders. In all other

1) Lacey, op. cit. pp. 166-168

2) ibid. 175

3) Bromley, op. cit. p. 35

4) ibid. p. 35; Haw, op. cit. pp. 150-151

cases the marriage was to be valid notwithstanding any breach in the prescribed formalities⁽¹⁾. This Act governing the formalities of marriage in England remained in power for over 125 years⁽²⁾.

Criticism against the last two Acts that they forced Roman Catholics and Protestant dissenters to go through a religious form of marriage to which they did not adhere led to the removal of this grievance by the Marriage Act of 1836⁽³⁾. This Act brought into existence the Superintendent Registrars of births, deaths and marriages, who were empowered to issue certificates to marry as an alternative to the publication of banns or the obtaining of a licence. For the first time since the Middle Ages, English law recognised the validity of a marriage which was purely civil in character and completely divorced from any religious element, by permitting the parties to marry per verba de praesenti in the presence of a Superintendent Registrar or a Registrar of marriages and two other witnesses.⁽⁴⁾ The Act went even further by permitting places of worship of members of denominations other than the Church of England to be registered for the solemnization of marriages in accordance with whatever religious ceremony the members wished to adopt, provided that at some stage the parties took each other as husband

1) Bromley, op. cit. p. 35; Lacey, op. cit. p. 175

2) Bromley, ibid. p. 35

3) Bromley, ibid. p. 36; Haw, op. cit. p. 155

4) Bromley, ibid. p. 36; Haw, ibid. pp. 155-156

and wife per verba de praesenti in the presence of a Registrar of marriages or an authorised minister of religion and at least two other witnesses⁽¹⁾. By this legislation the State accepted the ancient doctrine that consent and not the action of a priest is the essence of matrimony⁽²⁾ and this is why there was no suggestion from the part of the Church that the marriage of those united in the register offices were in any way deficient⁽³⁾.

Concerning consanguinity and affinity before the Reformation the Canon law of the Church was adopted, but one of the results of the break with the Roman Catholic Church was the adoption of a modified code of prohibited degrees laid down in Archbishop Parker's Table of 1563⁽⁴⁾. This Table was setting out in detail sixty kinship and affinities, which were declared to be diriment impediments according to the Levitical law⁽⁵⁾. Canon 99 of 1603 gave sanction to Archbishop Parker's Table by declaring that all marriages made contrary to it should be dissolved as void and the parties so married to be separated by course of law⁽⁶⁾. The interpretation of the phrase by course of law demanded that no marriage made contrary to the Table should be declared null and void until its validity had been questioned in and by the ecclesiastical courts⁽⁷⁾. If no

1) Bromley, op. cit. p. 36

2) Haw, op. cit. pp. 156-157

3) Lacey, op. cit. pp. 186-187

4) Included in all the editions of the 1662 Book of Common Prayer.

5) Lacey, ibid. p. 159

6) Haw, ibid. p. 71

7) ibid. p. 72

one took the trouble to impeach them, then they ranked as valid unions.⁽¹⁾ The Table was endorsed by the Marriage Act of 1835, commonly known as Lord Lyndhurst's Act⁽²⁾. The object of this measure was to solve some difficulties of the seventh Duke of Beaufort, who married his deceased wife's sister. In order to secure the validity of his marriage and the legitimacy of the offspring, Lord Chancellor Lyndhurst procured the passing of this Bill declaring that any marriages already contracted within the prohibited degrees which had not been questioned in the ecclesiastical courts should be held valid, while for the future all such unions should be null and void from the time they have been contracted⁽³⁾. However, since there was a common inclination to defy this prohibition, particularly in respect of unions between a man and his deceased wife's sister⁽⁴⁾, a Royal Commission was appointed in 1847 to inquire into the law of marriage relating to the prohibited degrees of affinity, which in its findings expressed doubt whether any measure of prohibition could be effectual "as these marriages would take place whenever a concurrence of circumstances gives rise to mutual attraction"⁽⁵⁾.

1) Haw, op. cit. p. 72

2) The Church and the Law of Nullity of Marriage, The Report of a Commission appointed by the Archbishops of Canterbury and York in 1949 at the request of the Convocations, London, S.P.C.K. 1955, p. 17; Lacey, op. cit. p. 182

3) Joyce, op. cit. p. 559

4) Haw, ibid. p. 123

5) Haw, ibid. p. 72

With regard to divorce, as already has been mentioned in the beginning of this chapter, the ecclesiastical courts which continued to exercise jurisdiction over matrimonial matters since the Reformation, had no power of making a decree dissolving the marriage union. The only known form of relief had been separation a mensa et thoro, without the right of remarriage, and declaration of nullity, but divorce dissolving the marriage bond was unobtainable⁽¹⁾. It appears, however, that in the years immediately after the Reformation, in some cases, parties regarded themselves as entitled to marry again after a decree a mensa et thoro and they found the way by passing a private bill through Parliament on the ground of the wife's adultery⁽²⁾. But the process apart from being slow was also very expensive⁽³⁾.

In 1669, John Manners, Lord Rosse, having been granted a divorce a mensa et thoro on the ground of his wife's adultery, caused a bill to be debated in Parliament authorising him to marry another lady, while his separated spouse was still alive⁽⁴⁾. The bill was passed in the House of Lords by a narrow majority of two, with two of the Bishops having supported it⁽⁵⁾. After a considerable debate in the House of Commons it was passed there too. This was an important precedent which was followed with increasing frequency, but it was also a turning point in

1) A Century of Family Law, edited by R.H. Graveson and F.R. Crane, Sweet and Maxwell, 1957, pp. 4-5

2) ibid. p. 5; Lacey, op. cit. p. 162

3) A Century of Family Law, op. cit. pp. 8, 316

4) Haw, op. cit. p. 136; Lacey, op. cit. 162

5) ibid. The two Bishops who supported the bill were Cosin of Durham and Wilkins of Chester.

the relations between Church and State. It was an early step towards independent action on the part of the State with regard to marriage, and from that time on, it could be said that divorce was officially recognised by the State though the only means of securing it was by a Private Act of Parliament⁽¹⁾.

It is recorded that from 1700 there was about one divorce, increasing to two or three each year by this proceeding⁽²⁾. Over the period 1715 to 1850 the total number of dissolutions was, according to the Report of the Royal Commission of 1850, only 244⁽³⁾. But the demand for a cheaper and simpler form of divorce was growing and reasons were not hard to find. In the first place, English wives as well as husbands became aware of the existence across the Channel of systems of divorce which were much more liberal.⁽⁴⁾ Secondly, the law, so far from protecting the wife was oppressing her :

" She (the English wife) is homeless, helpless, hopeless, and almost destitute of civil rights. She is liable to all manner of injustice, whether by plot or by violence. She may be wronged in all possible ways, and her character may be mercilessly defamed; yet she has no redress. She is at the mercy of her enemies"⁽⁵⁾.

Thirdly, in a proceeding by a husband against an alleged adulterer the wife had no right to appear or to be represented in her own defence. Her moral reputation

1) Actually Lord Rosse adopted the technique of the Marquess of Northampton who was the first in 1551 to initiate a bill in Parliament which was made an Act placing him "at liberty by the laws of God to marry", Lacey, op. cit. p. 163

2) A Century of Family Law, op. cit. p. 4

3) Report of the Royal Commission, 1956, op. cit. p. 4

4) R.H. Graveson, op. cit. p. 7

5) Lord Lyndhurst, speaking on the second reading of the 1857 Matrimonial Causes Bill, Hansard, Parliamentary Debates, vol. 142, col. 410.

and her economic existence alike rested on the outcome of proceedings in which she could take no part, and which themselves might be but the first collusive step between the husband and the alleged adulterer⁽¹⁾.

The fourth stimulent to the demand for legal reform lay in the fact that the process for passing a Private bill through Parliament was so expensive that only the rich could afford to make use of this channel⁽²⁾.

1) R.H. Graveson, op. cit. p. 7

2) The cost of obtaining such a divorce was estimated in 1853 at approximately £ 700 or £ 800, C.E.P. Davies, Matrimonial Relief in English Law, in A Century of Family Law, op. cit. p. 316; a very interesting illustration of this point is related by R.H. Graveson in his contribution The Background of the Century, in A Century of Family Law : " A prisoner had been convicted of bigamy in 1856. The judge asked him whether he had anything to say why sentence should not be passed upon him. The prisoner exclaimed 'My wife was unfaithful; she robbed me and ran away with another man, and I tought I might take another wife'.
The judge : 'You are quite wrong in supposing that. You ought to have brought an action for criminal conversation; that action would have been tried by one of Her Majesty's judges at the Asizes; you would probably have recovered damages; and then you should have instituted a suit in the ecclesiastical court for a divorce a mensa et thoro. Having got that divorce, you should have petitioned the House of Lords for a divorce a vinculo, and should have appeared by counsel at the bar of their Lordships' House. Then, if the Bill passed, it would have gone down to the House of Commons; the same evidence would possibly be repeated there; and if the Royal Assent had been given after that, you might have married again. The whole proceeding would not have cost you more than £ 1.000'.

The prisoner : 'Ah, my Lord, I never was worth a thousand pence in all my life'.

The judge : ' That is the law, and you must submit to it'.
op. cit. p. 8

It seems then that by the middle of the nineteenth century it was mainly on these grounds that the demand for a more rational and just system was continuously growing and pressing. Very briefly the situation as it existed in 1850 was summarised in the Report of the Royal Commission of 1909 as follows :

" according to common law as well as ecclesiastical law and practice, divorce remained unrecognised; but the Legislature recognised it in case of a wife's adultery, and in case of a husband's when his adultery was accompanied with aggravating circumstances, by giving a remedy through what was in form a legislative, but in substance a judicial proceeding, which was open, as a matter of course, on sufficient evidence, to anyone who was rich enough to pay for it. The cost and inconvenience were, however, so great that the remedy was obviously beyond the means of the great bulk of the community"(1).

1) Quoted in the Report of the Royal Commission, 1956
op. cit. p. 4

2. Conditions and Impediments to Marriage according to the Canon Law and the Civil Legislation in England since 1850

Until 1925 the civil law of England concerning banns was that enacted in 1753 by Lord Hardwicke's Marriage Act, as amended by the new Marriage Act of 1823, which has already been mentioned in the previous chapter⁽¹⁾. According to that law, marriage without banns or licence should be void, though by the Church's law it seems to be considered irregular but valid⁽²⁾. Open dissent by parents or guardians after publication of banns rendered the marriage void, and unless it proved that the parent or guardian was mentally incapable there was no way of dispensing with his consent⁽³⁾. This legislation was considerably modified in 1925, when an Act was passed, known as the Guardianship of Infants Act of 1925, which was primarily concerned with the civil and not the ecclesiastical side of marriage. For the issue of a marriage licence to a minor the consent of both parents is now necessary, if they are living together; if they are divorced, of the parent who has control over the child; if one parent is dead, of the survivor, unless the deceased parent has appointed a guardian, in which case,

1) see pp. 55-57

2) Lacey, op. cit. pp. 166, 175; Haw, op. cit. pp. 149-150

3) Lacey, ibid. pp. 175-176

of the surviving parent and the guardian. If the minor is illegitimate, the consent of the mother is necessary, unless she has been legally deprived of the custody of the child⁽¹⁾. Furthermore the Act protected the minor's right to marry by providing that the minor may appeal from a parent's or guardian's refusal of consent to a civil court, which has power to overrule the refusal if it thinks fit⁽²⁾. It also provided that the authority issuing the licence, whether civil or ecclesiastical may grant a licence, if it is satisfied that the consent cannot be obtained because of absence or because of some mental disability⁽³⁾.

By the Age of Marriage Act of 1929 the age at which persons might lawfully marry was raised from 14 years in the case of a male and 12 years in the case of a female to 16 years in the case of both, and this was repeated in the Marriage Act of 1949⁽⁴⁾.

The ecclesiastical law regarding age and parental consent was based on Canon 100 of 1603 which forbade but did not invalidate marriage of persons under 21 without parental consent⁽⁵⁾. The proposals of 1947 for a Revised Body of Canons suggested that :

1) "Parental Control and Guardianship" by P.H. Pettit in A Century of Family Law, op. cit. pp. 72-73

2) ibid. pp. 72-73; Lacey, op. cit. p. 176

3) Lacey, ibid. p. 177

4) The Church and the Law of Nullity, op. cit. p. 49; "The English Law of Marriage" by T.E. James in A Century of Family Law, op. cit. p. 30

5) W.K. Lowther Clarke, op. cit. p. 465

" No person who is under sixteen years of age shall marry, and all marriages purported to be made between persons either of whom is under sixteen years of age are void".

" Persons under twenty-one years of age (except they be persons in widowhood) ought not to marry against the will of their parents or of their guardians lawfully constituted"(1).

Apart from the requirements, already mentioned, concerning bans, proper age and parental consent, the law of England and of the Anglican Church recognised and recognises the following additional conditions, which, "obtaining at the time of the contracting of the marriage, rendered the two parties incapable of contracting with each other"(2). These conditions effect either the consent itself, or the parties consenting.

Of the first class are mistaken identity (i.e. error as to the identity of the other person) force, madness and clandestinity. The principle underlying this last condition is that unless the consent is given publicly, in front of witnesses and in accordance with the rite prescribed by law, there is deemed to be no consent(3). Furthermore in giving the consent the parties should be in sane and mature mind so as to be in a position to fully understand the duties and responsibilities of the contract they enter into(4).

1) The Canon Law of The Church of England, Report of the Archbishops' Commission, London, S.P.C.K. 1947, p. 128. These proposals were adopted and promulgated by the Convocations of Canterbury and York in 1964 and 1969 in The Canons of the Church of England, London S.P.C.K. 1969 as Canons B 31 and B 32 pp. 22-23 so to-day the law of the Church over this point is in complete agreement with the civil legislation.

2) Lacey, op. cit. pp. 196-197

3) Lacey, ibid. p. 197

4) Bromley, op. cit. pp. 71, 87

To the second class belonged consanguinity and affinity, impotency and the bond of an existing marriage⁽¹⁾. This last condition has always been an absolute impediment by the law of the Church of England, whereas in the law of the State it is subject to the statutory recognition of divorce a vinculo.

As regards the impediments of consanguinity (blood relationship) and affinity (relationship by marriage), these were founded on the book of Leviticus⁽²⁾ and, as already mentioned, were regulated in England by Archbishop Parker's Table of forbidden degrees⁽³⁾. This Table, having been endorsed by the 1835 Marriage Act, remained in force until 1907. Up to that time the State officially accepted this law of the Church, but the 1907 Deceased Wife's Sister's Marriage Act was the first of a series of statutes which followed and gave permission for certain unions that were prohibited by Parker's Table and were described by Canon 99 of 1603 as incestuous and unlawful⁽⁴⁾. The 1907 Deceased Wife's Sister's Act provided that no marriage between a man and his deceased wife's sister shall be void or voidable as a civil contract by reason only of such affinity; but it is not to be lawful for a man to marry the sister of his divorced wife⁽⁵⁾.

1) Lacey, op. cit. p. 197

2) Leviticus xviii, 7

3) see p. 58

4) The Church and Marriage, Report, 1935, op. cit. p. 102; Haw, op. cit. p. 122

5) The Church and Marriage, Report, 1935, op. cit. p. 102
The word 'sister' includes a sister of the half-blood, ibid.

The Church set up in 1908 a Committee on Marriage Problems, which declared on that particular question as follows :

" We are of the opinion that marriage with a deceased wife's sister, where permitted by the law of the land and at the same time prohibited by the canons of the Church, is to be regarded not as a non-marital union, but as a marriage ecclesiastically irregular, while constituting the parties open and notorious evil livers"(1).

In 1921, the Deceased Brother's Widow's Marriage Act extended the provisions of 1907 Act to a marriage between a man and his deceased brother's widow, and it provided that a man might not marry the divorced wife of his brother, or the wife of his brother who has divorced his brother during the lifetime of such brother⁽²⁾.

Ten years later a further breach was made in Parker's Table by the 1931 Marriage Act on Prohibited degrees of Relationship, which extended the provisions of the 1907 Act and legalised marriages between an uncle and his niece by marriage, or between an aunt and her nephew by marriage⁽³⁾. Accordingly the following marriages were allowed between a man and :

1. his deceased wife's brother's daughter,
2. his deceased wife's sister's daughter,
3. his father's deceased brother's widow,
4. his mother's deceased brother's widow,
5. his deceased wife's father's sister,
6. his deceased wife's mother's sister,
7. his brother's deceased son's widow,
8. his sister's deceased son's widow (4).

1) Report of the Committee on Marriage Problems in the Report of the Lambeth Conference, 1908 p. 143

2) Church and Marriage, Report, 1935, op. cit. p. 102
The word brother was defined to include a half-brother, ibid.

3) ibid. p. 102

4) ibid. p. 102

Affinity was no longer a bar to marriage except in the direct line and thus in 1931 the law of the State was in conflict with the law of the Church over these prohibitions⁽¹⁾. Another Committee was set up again by the Church to examine the question of affinity which reported in 1935 that :

" our own study of the question has led us to the opinion that the Table of Affinity presupposes that a principle lies behind the prohibitions in Leviticus, which is not to be found there, and that in consequence the Table should receive full and careful investigation and reconsideration by the Church"(2).

In 1937 another Commission was appointed⁽³⁾ which examined the problem from different angles and came to the conclusion that "while some of the customary impediments of consanguinity and affinity are everywhere observed, and spring from an instinctive abhorance of certain unions", the validity and justification of the remainder depend on the social organisation which obtains in any community⁽⁴⁾. The Commission was of the opinion that some of the prohibitions contained in Leviticus were justified at that time in the social organisation of the Jews, but they are not necessarily to be regarded as equally justified in all times and places. They recommended a revision of Parker's Table, which should vary in different provinces of the Anglican Communion, according to their different social and moral conditions⁽⁵⁾. The impediments arising from

1) Haw, op. cit. p. 124

2) Report on Church and Marriage, 1935, op. cit. p. 29

3) Haw, ibid. p. 125; Lacey, op. cit. p. 194

4) Palmer's Report, London, S.P.C.K. 1940, p. 68

5) ibid. Haw, ibid. p. 126; Lacey, ibid. p. 195

consanguinity were left untouched; but in regard to affinity, the Commission recommended the prohibition of all unions between persons related by marriage in the direct -ascending and descending- line. Unions between persons related collaterally by marriage should be treated by the different provinces of the Anglican Communion in accordance with their own social and moral conditions. It was suggested that, Parker's Table should be revised to permit marriages between brothers and sisters-in-law and between uncles and nieces and aunts and nephews by marriage⁽¹⁾.

In 1942 a joint Committee of the two Convocations was set up and reported two years later endorsing the recommendations of the earlier Commission and asking for the necessary steps to be taken to substitute canon 99 of 1603 with a new Table of Kindred and Affinity⁽²⁾. This proposed new Table, which was enacted by both Convocations of Canterbury and York in May 1946⁽³⁾, and effected a reconciliation between the laws of the State and the canons of the Church, was as follows :

-
- 1) Kindred and Affinity as Impediments to Marriage, the Commission's Report, London, S.P.C.K. 1940, p. 68
 - 2) Lacey, op. cit. 195; Haw, op. cit. pp. 125-126; The Canon Law of the Church of England, op. cit. p. 126
 - 3) Chronicle of Convocation, May 1946, pp. iv, v.

A Table of Kindred and Affinity⁽¹⁾

wherein whosoever are related are forbidden
by the Church of England to marry together.

<u>A man may not marry his :</u>	<u>A woman may not marry with her :</u>
Mother	Father
Daughter	Son
Father's Mother	Father's Father
Mother's Mother	Mother's Father
Son's Daughter	Son's Son
Daughter's Daughter	Daughter's Son
Sister	Brother
Father's Daughter	Father's Son
Mother's Daughter	Mother's Son
Wife's Mother	Husband's Father
Wife's Daughter	Husband's Son
Father's Wife	Mother's Husband
Son's Wife	Daughter's Husband
Father's Father's Wife	Father's Mother's Husband
Mother's Father's Wife	Mother's Mother's Husband
Wife's Father's Mother	Husband's Father's Father
Wife's Mother's Mother	Husband's Mother's Father
Wife's Daughter's Daughter	Husband's Son' Son
Wife's Son's Daughter	Husband's Daughter's Son
Son's Son's Wife	Son's Daughter's Husband
Daughter's Son's Wife	Daughter's Daughter's Husband
Father's Sister	Father's Brother
Mother's Sister	Mother's Brother
Brother's Daughter	Brother's Son
Sister's Daughter	Sister's Son

On the other hand the civil law of England concerning the impediments of consanguinity and affinity was consolidated in the First Schedule of The Marriage Act of 1949, according to which the list of prohibited degrees was as follows⁽²⁾:

1) The Canon Law of the Church of England, op. cit. p. 126
This Table was reenacted by the Ecclesiastical Canons of the Church of England, which were promulgated by the Convocations of Canterbury and York in 1964 and 1969 with two additional prohibitions, namely, a man may not marry his adopted daughter and a woman may not marry with her adopted son; see The Canons of the Church of England, London, S.P.C.K. 1969, p. 23; also Appendix III p. 331
2) Report, The Church and the Law of Nullity of Marriage, op. cit. p. 50

The first Schedule
(The Marriage Act 1949)⁽¹⁾

KINDRED AND AFFINITY

PART I

Prohibited degrees of relationship

Mother	Father
Daughter	Son
Father's Mother	Father's Father
Mother's Mother	Mother's Father
Son's daughter	Son's Son
Daughter's Daughter	Daughter's Son
Sister	Brother
Wife's Mother	Husband's Father
Wife's Daughter	Husband's Son
Father's Wife	Mother's Husband
Son's Wife	Daughter's Husband
Father's Father's Wife	Father's Mother's Husband
Mother's Father's Wife	Mother's Mother's Husband
Wife's Father's Mother	Husband's Father's Father
Wife's Mother's Mother	Husband's Mother's Father
Wife's Son's Daughter	Husband's Son's Son
Wife's Daughter's Daughter	Husband's Daughter's Son
Son's Son's Wife	Son's Daughter's Husband
Daughter's Son's Wife	Daughter's Daughter's Husband
Father's Sister	Father's Brother
Mother's Sister	Mother's Brother
Brother's Daughter	Brother's Son
Sister's Daughter	Sister's Son

PART II

Statutory exceptions from prohibited degrees
of relationship

Deceased Wife's Sister	Deceased Sister's Husband
Deceased Brother's Wife	Deceased Husband's Brother
Deceased Wife's Brother's Daughter	Father's deceased Sister's Husband
Deceased Wife's Sister's Daughter	Mother's deceased Sister's Husband
Father's deceased Brother's Wife	Deceased Husband's Brother's Son
Mother's deceased Brother's Wife	Deceased Husband's Sister's Son
Deceased Wife's Father's Sister	Brother's deceased Daughter's Husband
Deceased Wife's Mother's Sister	Sister's deceased Daughter's Husband
Brother's deceased Son's Wife	Deceased Husband's Father's Brother
Sister's deceased Son's Wife	Deceased Husband's Mother's Brother

1) Report, The Church and the Law of Nullity, op. cit. p. 50
"brother" includes a brother of the half-blood,
"sister" includes a sister of the half-blood, ibid. p. 50

The first Part of the aforementioned Schedule of the 1949 Act was drawn up in two columns of which the left and right state the persons with whom a man and a woman respectively may not intermarry. Marriage within these degrees was prohibited at all times and in all circumstances, thus a man could not marry his stepmother even after his father's death. A marriage was prohibited whether the relationship was traced through the whole blood or the half blood, consequently a man could not marry neither his half-brother's daughter nor his illegitimate son's widow⁽¹⁾. An attempt to remove these prohibitions during the lifetime of a divorced spouse had no success when in January 1949 Lord Mancroft introduced a Private Member's Bill in the House of Lords, and he himself had to withdraw it after the Lord Chancellor had advised the House to reject it on the ground that the Government could not accept a controversial Private Member's Bill originating in the Upper House⁽²⁾.

1) Report, The Church and the Law of Nullity, op. cit. p. 49

2) Report on Marriage and Divorce, 1956, op. cit. p. 298

These prohibitions were later removed by the Marriage (Enabling) Act of 1960 which enabled persons to marry within these degrees of affinity if the former marriage has been annulled or dissolved whether or not the previous spouse is still alive. Today the prohibited degrees of relationship are based on the First Schedule of the Marriage Act of 1949, which in fact reproduces Archbishop Parker's Table as qualified by the four Acts passed between 1907 and 1960 (see Bromley, op. cit. p. 32) see Appendix II p. 332 for Archbishop Parker's Table and Appendix V p. for the First Schedule of the Marriage Act 1949, as amended by the Marriage (Enabling) Act 1960 and the Children Act 1975.

Cretney, op. cit.

With regard to the other impediments of marriage the proposals for a Revised Body of Canons which were published, ~~enacted~~ in 1946⁽¹⁾, stated that :

- "1. No marriage of unbaptised persons is permitted.
2. No person already married, but whose marriage has been dissolved by secular authority shall marry, so long as the other party to whom that person was married is still living, except when the Bishop of the Diocese sitting with his Chancellor, is satisfied that there were good grounds upon which such marriage could instead of being dissolved, have been declared to be null and void.
3. Marriage under sixteen years of age is void.
4. Parents' or guardian's consent for persons under twenty one is necessary (except in the case of widowhood).
5. No licence for the celebration of Marriage should be given without publication of banns, unless one of the parties shall make an oath or a solemn declaration that both have been baptised, and that there is no impediment of consanguinity, affinity or any other lawful cause to hinder their marriage; and further that there is no suit pending in any court touching any contract of marriage of either of the parties with any other; and further, that, if minors, they have obtained such consents as are by law required".

Such was in general the development of the civil and ecclesiastical legislation in England concerning the impediments of marriage during the period 1850 - 1950⁽²⁾. At first, while the jurisdiction on matrimonial matters rested in the hands of the ecclesiastical courts the law of the Church was implemented. Later on, when

1) The Canon Law of the Church of England, op. cit. pp. 126-129

2) Regarding the present ecclesiastical legislation, which was developed after 1950 and was promulgated by the Convocations of Canterbury and York see Appendix III p. 331

that jurisdiction was taken over by the civil courts in 1857, the law was amended by a series of statutes and there was a long conflict between the ecclesiastical and civil legislation. But, by the end of our period this opposition was almost over, and apart from the disagreement on the prohibited degrees, the other main difference on the impediments is that of divorce, which is not recognised by the civil legislation as an impediment for a fresh marriage, while according to the ecclesiastical law no person already married, but whose marriage has been dissolved is allowed to marry again during the lifetime of the previous partner.

3. The Ecclesiastical and Civil Law of Nullity in
England in 1850

Nullity of marriage was a remedy given by the ecclesiastical courts before 1857 based on the theory of the pre-Reformation Canon Law that a valid marriage requires consent and consummation⁽¹⁾, and that the necessary requirements for the formation of marriage should be strictly observed⁽²⁾. Accordingly, marriage could be pronounced null and void for contractual defects, such as absence of consent or capacity, relationship within the prohibited degrees, failure to observe the due form of solemnization, and also for incapacity to consummate the marriage⁽³⁾.

1) C.E.P. Davies, "Matrimonial Relief in English Law", A Century of Family Law, op. cit. p. 334; S.M. Cretney, Principles of Family Law, Sweet & Maxwell, London, 1979 p. 31

2) Cretney, op. cit. p. 31

3) Davies, op. cit. p. 334. Since in the pre-Reformation time the ecclesiastical courts were precluded from granting decrees of divorce, a decree of nullity was the only escape from a union which had become intolerable. It was not, therefore, surprising that the grounds on which decrees of nullity could be obtained at that time, were considerably extended. If any of the rules concerning the formation of marriage were broken there could be no marriage, however solemn and magnificent the ceremony and however long thereafter the parties lived together as man and wife. Anyone who had an interest could dispute the validity of the marriage, even after the death of the parties. In such cases the ecclesiastical court would grant a decree declaring that there was and never had been a marriage. Hence (whether or not a decree had been obtained) none of the legal consequences of marriage attached to a purported marriage which infringed the rules were valid (Cretney, op. cit. p. 31). So, for example, after the death of a tenant in fee simple his brother might claim his estate on the ground that the tenant's marriage was

The law made no distinction between void and voidable marriages; marriages were either void or valid⁽¹⁾. It did, however, draw a distinction between an impediment to a marriage which rendered it wholly void (impedimentum dirimens), and an impediment to a marriage which left it wholly valid but rendered the parties subject to ecclesiastical censure or punishment (impedimentum prohibitivum)⁽²⁾. The effect of a decree annulling a marriage on the ground of an impedimentum dirimens was to cancel any legal consequences of such marriage and to make illegitimate its offsprings⁽³⁾.

void, with the result that his children, being illegitimate, could not inherit and his 'widow', never having been married, could not claim dower (Bromley, op. cit. p. 69).

1) Report, The Church and the Law of Nullity of Marriage, op. cit. p. 15

2) ibid. p. 15

3) ibid. p. 15 At the Reformation two important reforms occurred. First, the grounds on which the validity of a marriage might be attacked were somewhat restricted. Secondly, the common law courts intervened to prevent the ecclesiastical courts from impeaching the validity of marriages on certain grounds once either party had died (Cretney, op. cit. p. 31). So by the beginning of the seventeenth century, the common law courts obviously concerned at the ease with which marriages could be set aside and the children being pronounced illegitimate, they cut down the jurisdiction of the ecclesiastical courts by forbidding them to annul marriages in certain cases after the death of either party. This prohibition is the origin of the distinction between void and voidable marriages which survived in the modern law. A decree can be pronounced in relation to a void marriage at any time, even after the death of the parties, but voidable marriages can only be attacked during the lifetime of both parties, ibid. pp. 31-32.

The principal dirimentary impediments on which the ecclesiastical courts acted in this way were :

- a) a prior existing marriage or espousal of one of the parties;
- b) impotence;
- c) prohibited degrees of relationship;
- d) absence of true consent⁽¹⁾.

These broad outlines laid down by the ecclesiastical courts were adopted by the Divorce Court, established after 1857, in accordance with the direction of the Matrimonial Causes Act of 1857 :

" to give relief on principles and rules which shall be as nearly as may be conformable to the principles and rules on which the ecclesiastical courts have heretofore acted and given relief" (2).

Since assuming its jurisdiction the Divorce Court preserved the distinction between void and voidable marriages which resulted from the historical development of the law, summarised in note 3 p. 77. The distinction between the effects of the two groups can be tabulated as follows⁽³⁾ :

<u>Void</u>	<u>Voidable</u>
No valid marriage ever existed.	The marriage is valid unless annulled.
Any interested person may take proceedings	Only the parties to the marriage can take proceedings.
A decree is not necessary; the marriage does not exist and a court decree merely records a "blinding glimpse of the obvious" ⁽⁴⁾ .	Unless a decree is obtained the marriage remains in force.

1) Report, The Church and the Law of Nullity of Marriage, op. cit. p. 16
 2) Matrimonial Causes Act of 1857, s. 22, cited by Davies, op. cit. p. 334
 3) Cretney, op. cit. p. 32
 4) Cretney ibid. p. 32 According to Bromley such a decree is needed against any doubt that the marriage was void and for property adjustment or financial provision, op.cit. p.72

It was natural that during the past century the law of nullity received many interpretations and changes through various legislations which to a great extent modified the Canon Law of the Church as it was at first introduced and applied. In the following part of this chapter, each ground on which a decree of nullity can be obtained will be briefly examined in turn as it was amended or introduced by the various legislations since the passing of the Matrimonial Causes Act of 1857⁽¹⁾.

1) A very able and comprehensive review of the law of Nullity from the part of the Church of England was presented in the Report "The Church and the Law of Nullity of Marriage", S.P.C.K. London 1955, which was produced by a Commission appointed in 1949 by the Archbishops of Canterbury and York at the request of the Convocations. From the part of the civil legislation there was no such comprehensive review, as S.W. Cretney states in his Principles of Family Law, op.cit.p. 33, until the Law Commission produced a report on the subject in 1970 (Law Commission No 33, Report on Nullity of Marriage) Most of the Commissions recommendations were implemented in the Nullity of Marriage Act, 1971 (now consolidated in the Matrimonial Causes Act 1973) which preserves the distinction between void and voidable marriages. Accordingly, the present law of Nullity in England recognises the following grounds on which a marriage should be void :

- a.(i) the parties are within the prohibited degrees of relationship;
- (ii) either party is under the age of sixteen; or
- (iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage;
- b. that at the time of marriage either party was already lawfully married;
- c. that the parties are not respectively male and female". Matrimonial Causes Act 1973, London, H.M.S.O. Reprinted 1976, p. 8. The grounds on which a marriage is voidable according to this Act will be referred to in the proper section of this chapter.

A. VOID MARRIAGES

1. Prohibited Degrees⁽¹⁾. Up until 1835 a marriage within the prohibited degrees was merely voidable, but the Marriage Act of 1835, known also as Lord Lyndhurst's Act⁽²⁾, endorsed Archbishop Parker's Table and made all such marriages void. It seems, however, that at the time there was a common inclination to defy particularly the prohibitions relating to affinity⁽³⁾. By the end of the last century there was wide dissatisfaction against the strict rules of the law on affinity and it was only after bitter controversy that the Deceased Wife's Sister's Marriage Act was passed in 1907, permitting a man to marry his deceased wife's sister⁽⁴⁾. This Act was the first in a series of statutes which followed and which to a great extent modified the law of the Church as it was set up in Archbishop Parker's Table⁽⁵⁾.

1) The prohibited relationship may arise from consanguinity (i.e. blood relationship) or from affinity (i.e. relationship by marriage). In the case of consanguinity the prohibition is based on moral and eugenic grounds. Most people view the idea of sexual intercourse (and therefore of marriage) between, say, father and daughter or brother and sister with abhorrence; at the same time, the more closely the parties are related the greater will be the risk of their children inheriting undesirable genetic characteristics. In the case of affinity, prohibition was originally based on the concept that husband and wife were one flesh, so that marriage with one's sister-in-law was as incestuous as marriage with one's own sister, see Bromley, op. cit. p. 31

2) see p. 59

3) Haw, op. cit. p. 123

4) The Church and Marriage, Report 1935, op. cit. p. 102

5) see pp. 68ff.

The Acts which followed were : the Deceased Brother's Widow's Marriage Act, 1921 and the Marriage (Prohibited Degrees of Relationship) Act, 1931 which extended further the relaxation of the prohibitions⁽¹⁾. The 1949 Marriage Act consolidated in its First Schedule all previous legislation related to consanguinity and affinity⁽²⁾ and declared that a man may not marry the sister or the half-sister of a wife whom he had divorced or who had divorced him during the lifetime of the former wife, or the former wife of his brother or half-brother, whose marriage had been judicially dissolved during the brother's lifetime⁽³⁾.

As a result of these civil enactments various Commissions were appointed to examine the question of consanguinity and affinity from the Church's point of view.⁽⁴⁾ In their Reports the Commissions suggested that a revision of Archbishop Parker's Table was needed, since some of the prohibitions in the Book of Leviticus, on which the Table was based, were justified only at the time and the social organisation of the Jews, but, they were not necessarily to be regarded as equally justified in all times and places⁽⁵⁾. A joint Committee which was appointed in 1942 prepared a new Table of Kindred and Affinity which was enacted by both Convocations in 1946 and brought a reconciliation between the civil law and the Church canons⁽⁶⁾.

1) see pp. 67-68

2) for the 1949 Marriage Act Table, see p. 72

3) These prohibitions were later removed by the Marriage (Enabling) Act of 1960 which enabled persons to marry within these degrees of affinity if the former marriage has been annulled or dissolved, whether or not the previous

2. Minimum Age. According to Canon 100 of 1603 the Church of England forbade but did not invalidate marriage of persons under 21 without parental consent⁽¹⁾. However, since the matrimonial matters were transferred to the civil courts the age of consent for marriage seems to have been determined by attainment of puberty, fixed by presumption at fourteen years for boys and twelve for girls. Marriage under that age if unconsummated could be avoided by an extrajudicial act after the parties attained fourteen and twelve years respectively⁽²⁾. It was in 1929 that The Age of Marriage Act of 1929 effected two changes in this law. First, it was enacted that a valid marriage could not be contracted unless both parties had reached the age of sixteen, and secondly, any marriage to which either party was under this age was made void and not voidable as before⁽³⁾.

spouse is still alive. Today the prohibited degrees of relationship are based on the First Schedule of the Marriage Act of 1949 as qualified by the four Acts passed between 1907 and 1960, Bromley, op. cit. p. 32 for the 1949 Marriage Act Table of Prohibited Degrees as amended see ibid. Appendix B p. 647

4) The Committee on Marriage Problems in the Report of the Lambeth Conference 1908, p. 143; The Committee which was appointed in 1931 and reported in 1935 on The Church and Marriage, op. cit. p. 102; the Commission appointed in 1937 which reported on the Kindred and Affinity as Impediments to Marriage, London, 1940

5) ibid. p. 68; Haw, op. cit. p. 126; Lacey, op. cit. p. 195 see also pp. 69-70

6) see p. 71 for the Table which was reenacted and promulgated in 1964 and 1969 with two additional prohibitions
 cf. The Canons of the Church of England, op. cit. p. 23

1) W.K. Lowther Clarke, op. cit. p. 465

2) Davies, op. cit. p. 340

3) This was repeated in The Nullity of Marriage Act 1971 (now consolidated in the Matrimonial Causes Act 1973 which is at present in force, Cretney, op. cit. p. 33

This was repeated in the Marriage Act of 1949⁽¹⁾ which consolidated all previous enactments relating to the formalities of marriage and has since been amended in minor details⁽²⁾. As far as the law of the Church is concerned on this point, the Archbishops Commission on Canon Law in their Proposals for a Revised Body of Canons in 1947 proposed a draft canon which would bring the law of the Church into harmony with the civil legislation, i.e. that a marriage shall be void if either party is under the age of sixteen, but preserving at the same time the twenty first year as the age of majority⁽³⁾.

1) Marriage Act 1949, (s. 2); Davies, op. cit. p. 340

2) Bromley, op. cit. p. 37. A very important change in the Marriage Act of 1949 was the reduction of the age of majority to 18 by the Family Law Reform Act of 1969 as a result of which anyone over this age may now marry without the consent of any other person, Bromley, ibid. p. 37

3) Draft Canon XXXVIII in The Canon Law of the Church of England, being the Report of the Archbishops' Commission on Canon Law, together with Proposals for a Revised Body of Canons, London, S.P.C.K. 1947 p. 128. This canon was promulgated by the Convocations of Canterbury and York in 1964 and 1969 as canon B 31 "No person who is under sixteen years of age shall marry, and all marriages purported to be made between persons either of whom is under sixteen years of age are void" and canon B 32 "No minister shall solemnize matrimony between two persons either of whom (not being a widow or widower) is under twenty-one years of age otherwise than in accordance with the requirements of the law relating to the consent of parents or guardians in the case of the marriage of a person under twenty-one years of age", The Canons of the Church of England, London, S.P.C.K. 1969 pp. 22-23;

The Church and the Law of Nullity of Marriage, op. cit. p. 18

3. Formalities and capacity⁽¹⁾. If a valid marriage is to be created, the parties must comply with the necessary procedural requirements, i.e. there must be not only certainty of their intention and capacity to bring about the desired legal consequences, but also there must be proof of a valid ceremony, of which records should be kept for public inspection⁽²⁾. It was in 1836 that the law was changed to permit marriage outside the Church of England⁽³⁾, and since then two parallel systems became available :

- (i) Marriage in the Church of England. This followed the pattern laid down by Lord Hardwicke's Act; and
- (ii) Marriages under the provisions of the 1836 Marriage Act. These could either be purely secular (the Register Office ceremony) or could (subject to certain conditions) be celebrated in non-Anglican places of worship⁽⁴⁾.

By 1949 the extremely complicated law relating to the formalities of marriage could be found only by reference to more than 40 statutes, quite apart from the case law which had grown up as the result of their judicial

1) The formalities required by the Lord Hardwicke's Act of 1753, already mentioned in pp. 55-56, put an end to the contracting of the so-called clandestine marriages and stipulated a public ceremony, in accordance with the rites of the Church of England, after the calling of banns on three successive Sundays. The consent of a minor's parents or guardians had to be obtained and entries made in an official register.

2) Cretney, op. cit. p. 4; Bromley, op. cit. pp. 37ff

3) Marriage Act of 1836 see pp. 57-58; Bromley, ibid. p. 36

4) Bromley, ibid. pp. 46-49; Cretney, ibid. pp. 4-30

interpretation. The Marriage Act of 1949 (still based on the pattern established in 1836) consolidated these enactments in one Act with very few and minor changes made in the substantive law⁽¹⁾.

During the period under consideration, if the ceremony was to take place in accordance with the rites of the Church of England, a marriage could be solemnised :

- "a) after the publication of banns of marriage;
- b) on the authority of a special licence of marriage granted by the Archbishop of Canterbury or any other person by virtue of the Ecclesiastical Licences Act of 1533;
- c) on the authority of a licence granted by an ecclesiastical authority having power to grant such a licence (known as common licence); or
- d) on the authority of a certificate issued by a superintendent registrar"⁽²⁾.

The presence of at least two witnesses and of a clergyman in holy orders was also required⁽³⁾. The non-observance of these formalities would render a marriage void⁽⁴⁾.

1) Bromley, op. cit. pp. 36-37

2) T.E. James "The English Law of Marriage", A Century of Family Law, op. cit. p. 32; The Canon Law of the Church of England, op. cit. pp. 128ff, Based on the past practice and discipline of the Church the proposed canons for a Revised Body of Canons of 1949 were promulgated by the Convocations of Canterbury and York in 1964 and 1969 which also included a section that "The Archbishop of Canterbury may grant a special licence for the solemnization of matrimony without the publication of banns at any convenient time or place not only within the province of Canterbury but throughout all England", Canon B 34 s. 2, The Canons of the Church of England, op. cit. p. 24

3) Marriage Act, 1949 s. 22; T.E. James, op. cit. p. 33

4) Ibid. s. 25; p. 33

The Marriage Act of 1949 gives various directions relating to the formalities for a valid marriage, according to which a marriage may be void if it does not take place within three months of the complete publication of the banns, or of the issue of the common licence or of the entry of the notice of the intended marriage in the Marriage Notice Book of the Superintendent Registrar. After the lapse of this period of time the publication of the banns, the common licence and the notice of marriage, the Registrar's certificate and any licence granted therewith are void⁽¹⁾. Further it is provided that any marriage according to the rites of the Church of England whether on the authority of the publication of banns, a common licence or Registrar's certificate shall be void if the parties knowingly and wilfully intermarry after this delay⁽²⁾.

4. Bigamy. For both civil and ecclesiastical legislation in England, marriage is "the voluntary union for life of one man and one woman to the exclusion of all others"⁽³⁾. Hence a purported marriage is and always has been void if it is proved that at the time of the ceremony either party is already lawfully married to a third party⁽⁴⁾.

1) Marriage Act 1949 ss. 16 (3) and 33 (2); T.E. James, op. cit. p. 34

2) ibid. s. 25 (c) and s. 49 (d); D. Tolstoy, The Law and Practice of Divorce and Matrimonial Causes, London, Sweet and Maxwell, 1963 p. 105

3) Of course in the Book of Common Prayer of 1662 it is stated that marriage "was ordained for the procreation of children.. for a remedy against sin,.. for the mutual help, society and comfort..", The Church and the Law of Nullity of Marriage, op. cit. p. 1, but this refers mainly to the objects of marriage and does not seem to contradict the above definition.

4) The Church and the Law of Nullity, op. cit. p. 16

5. Parties of same sex. Since marriage is a union between a man and a woman, it follows that a union between parties who are not respectively male and female has always been considered void⁽¹⁾.

B. VOIDABLE MARRIAGES⁽²⁾

1. Impotence. Impotence is inability to consummate the marriage and, to be a ground for nullity, such inability must exist at the time of marriage and continue to exist at the day of the hearing⁽³⁾. Until shortly before 1857 the ecclesiastical courts were requiring medical examination of the parties concerned, and so cohabitation for three years which might create a presumption of incapacity if consummation had not been effected during that time, was sufficient proof for this ground⁽⁴⁾. Ecclesiastical practice also required proof in the

1) Bromley, op. cit. p. 76; Cretney, op. cit. p. 48; It should be noted that this is clearly stated in the Act which is at present in force; see p. 79

2) The Nullity of Marriage Act, 1971 (now consolidated in the Matrimonial Causes Act 1973) recognises the following grounds on which a marriage should be voidable :

- (a) that the marriage has not been consummated owing to the incapacity of either party to consummate it;
- (b) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- (c) that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- (d) that at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the Mental Health Act 1959 of such a kind or to such an extent as to be unfitted for marriage;
- (e) that at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner.

pleadings that the impotence was incurable, but shortly after 1857 when the secular courts acquired jurisdiction in nullity cases, medical inspection was dispensed with in appropriate instances and decrees of nullity were granted even for curable impotence in special circumstances⁽¹⁾. Abandonment of medical examination by the courts and of strict proof of incurable impotence, enabled a more liberal view to be taken of the causes from which impotence might arise and, whereas in the earlier cases there was almost necessarily some physical defect in one of the parties, in later law it became recognised that psychological causes might be equally effective to produce incapacity to consummate a particular marriage⁽²⁾; nevertheless the law required some evidence of incapacity to consummate the marriage, from whatever cause arising. In many cases reliable evidence of incapacity was difficult to obtain and gradually the courts used more commonly the presumption of impotence arising from proof of wilful refusal of sexual intercourse⁽³⁾.

3) Tolstoy, op. cit. p. 111

4) Davies, op. cit. . 341; Matrimonial Causes Rules, 1947 r. 24 also provides that a registrar shall appoint a medical inspector of the court if in the circumstances of the case he considers it expedient to do so, ibid. p. 341

1) Davies, ibid. p. 342

2) ibid. p. 342; Report, The Church and the Law of Nullity op. cit. p. 30

3) Davies, ibid. p. 342

2. Wilful refusal to consummate. This was one of four new grounds introduced by the Matrimonial Causes Act of 1937⁽¹⁾ re-enacted by the Matrimonial Causes Act of 1950 which qualifies the ground as "wilful refusal of the respondent to consummate", so that a petitioner cannot ever present a petition on the ground of his own wilful refusal⁽²⁾.

The Commission appointed by the Archbishops of Canterbury and York in 1949 to report on the Church and the Law of Nullity, suggested that with the exception of wilful refusal to consummate, which alone arises after the marriage, the additional grounds for nullity, introduced by Parliament in 1937 may be accepted by the Canon Law of the Church of England⁽³⁾. The Commission also recommended a proposal to the Royal Commission which was appointed in 1951 for the repeal of this ground of nullity⁽⁴⁾.

1) This Act introduced the following new grounds which could render a marriage voidable :

- "(i) that the marriage has not been consummated owing to the wilful refusal of the respondent;
- (ii) that either party was at the time of the marriage of unsound mind or a mental defective, or subject to recurrent fits of insanity or epilepsy;
- (iii) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form;
- (iv) that the respondent was at the time of the marriage pregnant by some person other than the respondent "

Report, The Church and the Law of Nullity, op. cit. p. 49

2) Tolstoy, op. cit. p. 113

3) Report, The Church and the Law of Nullity, op. cit. p. 47

4) ibid. p. 48 Although the Royal Commission endorsed the proposal in its recommendations, the present law retained wilful refusal as a ground for a voidable marriage; see p.87

3. Lack of consent⁽¹⁾. During the period under consideration marriage, according to the old Church law, was created by the freely given mutual consent of the parties⁽²⁾. A marriage contracted by threats or duress was void⁽³⁾; so also where a party was induced to marry while intoxicated and had no intention of going through the ceremony⁽⁴⁾; so also where there was a mistake as to the identity of the other party⁽⁵⁾ or as to the ceremony itself, as where the parties go through a ceremony of marriage without realising that they are so doing⁽⁶⁾.

1) Since the early times of Christianity there was a dispute as to whether consent or consummation was the essential factor in the creation of marriage. In the early Church there was a time when, whilst it was spiritually desirable to have a religious ceremony, consummation was the essential factor in the creation of marriage and this was based not only on the Gen. 2,24 text "therefore shall a man leave his father and his mother and shall cleave to his wife; and they shall be one flesh" but also on similar references of St. Paul 1 Cor. vi, 16 (see Lacey, op. cit. p. 6; Haw, op. cit. pp. 49ff; Cretney, op. cit. p. 6). This caused problems with regard to the marriage of Joseph and Mary (who, according to some interpretations had exchanged vows of life-long chastity; (William Hay's Lectures on Marriage, edited by John C. Barry, Stair Society, Edinburgh, 1967 pp. 305-313). In the twelfth century it became accepted that a valid marriage could be formed by the mere exchange of consents in the present tense (per verba de praesenti) No other ceremony was needed; the Church, as a matter of discipline expected the parties to go through a religious ceremony, but, even so, it was the prior consent which created the marriage. If the consent was given in the future tense (per verba de futuro) a marriage was not immediately created. But if sexual intercourse took place between the parties after the promise, they immediately became man and wife; the explanation being that, present consent was implied at the time of the sexual intercourse so as to complete the marriage in substance, and give it equal validity with the contract de praesenti. Thus the Church reconciled the two views : the one of the early Church that consummation was necessary to form a marriage, and the other, which derived from the Roman law, that consent was the vital factor : consensus non concubitus facit matrimonium. The decrees of the Council of Trent(1563)

It was the Nullity of Marriage Act 1971, which made a marriage voidable if either party did not validly consent thereto, whether in consequence of duress, mistake, unsoundness of mind or otherwise⁽⁷⁾. Mistake and duress are now seldom used as grounds for annulment⁽⁸⁾. The only mistake which the courts have accepted as sufficient for this purpose occurs where the nature of the ceremony has been entirely misunderstood⁽⁹⁾. In these cases mistake has prevented consent being given to the marriage and mistake will not invalidate a marriage unless it has this result⁽¹⁰⁾.

In recent times few opportunities have arisen for developing the principle of duress as a ground for avoiding a marriage, not only because when marriage has been duly solemnised a presumption of consent arises which only the strongest evidence will rebut, but also because "divorce now is so much more easily available"⁽¹¹⁾.

required the presence of a priest and independent witnesses, but it seems that in England the old methods of contracting marriage continued until 1753, when Lord Hardwicke's Act did away with the formless common law marriage in England and stipulated a public Church ceremony which clearly calls for mutual consent of the parties to be given freely. Hence, it was until the Nullity of Marriage Act 1971 that lack of consent (whether arising from duress, mistake or insanity) made a marriage void. See Cretney, op. cit. pp. 6, 57; Bromley, op. cit. pp. 37-91; Report, The Church and the Law of Nullity of Marriage, op. cit. pp. 20-22, 11

2) Tolstoy, op. cit. p. 110

3) ibid. p. 110; Cretney, op. cit. p. 58

4) Tolstoy, op. cit. p. 110

5) ibid. p. 110; Cretney, ibid. p. 60; Bromley, op. cit. p. 88

6) ibid. p. 88

7) see p. 87

8) C.E.P. Davies, op. cit. p. 334

4. Unsoundness of mind, Mental Disorder and Epilepsy.

For some time before 1937 it was felt that the Marriage of Lunatics Act 1811 was not adequate to provide the relief which should be available. If a person of unsound mind, but not found lunatic by inquisition, was married during a lucid interval or, though mentally deranged, understood the rights and obligations of marriage, no remedy was given⁽¹⁾. But the opinion was widely held that where one of the parties was of unsound mind at the time of the ceremony the marriage should be capable of annulment in the interest of the other party no less than in the interests of possible children of the marriage and of the State⁽²⁾. This opinion was also expressed in the Royal Commission of 1912 which said :

" There are certain classes of case in which a party should, in our opinion, have a right to obtain a decree of nullity on the ground that the respondent is unfit to marry and has not disclosed the fact, and it is not known to the other party, and where, in the interests of the complaining party, and of possible children, and of the State and of morality, the marriage should not be held binding"⁽³⁾.

9) Davies, op. cit. p. 334 where cases are referred of marriage mistaken for betrothal, or marriage in Register Office mistaken for formality of giving notice of marriage, or Hindu marriage mistaken for ceremony of conversion to Hindu religion; see also Tolstoy, op. cit. p. 110

10) Davies, op. cit. p. 334

11) ibid. p. 335; Cretney, op. cit. p. 60

1) Davies, ibid. 337

2) ibid. p. 337

3) Report of Divorce Law Commission, 1912 p. 117 and Report on The Church and the Law of Nullity of Marriage, op. cit. pp. 28 and 38

Accordingly the 1937 Matrimonial Causes Act provided that marriages should be voidable on the ground that either party was at the time of the marriage of unsound mind, or a mental defective under the Mental Deficiency Acts 1913 to 1927 or was subject to recurrent fits of insanity or epilepsy⁽¹⁾. This remedy, however, is restricted by the conditions which the Act attached to it, that the petitioner must have been at the time of the marriage ignorant of the facts alleged; that proceedings for nullity must be instituted within a year from the date of the marriage; and that marital intercourse with consent of the petitioner has not taken place since discovery by the petitioner of the existence of the grounds for the decree which seems to prevent the affected party from presenting a petition⁽²⁾.

5. Concealed Venereal Disease and Pregnancy. For the same reasons of avoiding a marriage in the general interest the Report of the Royal Commission of 1912 recommended two additional grounds :

- a) that at the time of the marriage the respondent was suffering from concealed venereal disease in a communicable form, and
- b) the respondent was pregnant by some person other than the petitioner at the time of the marriage⁽³⁾.

Both recommendations were adopted by the 1937 Act and made subject to the same conditions as those attached

1) Davies, op. cit. p. 337; Report, The Church and the Law of Nullity of Marriage, op. cit. p. 23

2) ibid. p. 23; Now consolidated in the Matrimonial Causes Act 1971, see p. 87

3) Davies, ibid. p. 339

to unsoundness on mind⁽¹⁾.

Such then was the development of the civil and ecclesiastical legislation of Nullity in England during the period 1850 - 1950, with an effort in the footnotes and where necessary to bring it up to date.

With the exception of wilful refusal the new grounds for nullity, introduced by the 1937 and 1950 Acts⁽²⁾ have also been accepted by the Church. Wilful refusal has been accepted by the Church only as a ground for divorce (separation), but not for nullity. This explains the essential difference between nullity and divorce, in that divorce decrees are based upon some factor which has arisen since the marriage was contracted (originally valid), while decrees of nullity assert that by reason of some cause, existing prior to or in some way contemporary with the marriage, the latter was invalid from its beginning and in fact it is considered as if it has never been a true marriage at all⁽³⁾.

1) Tolstoy, op. cit. pp. 115-116

2) ibid. pp. 428-429 These are now consolidated in the 1973 Matrimonial Causes Act see p. 87; Cretney, op. cit. p. 33

3) Report, The Church and the Law of Nullity, op. cit. p. 30

4. Civil law of Divorce in England and the attitude of the Church of England to Divorce from 1850 - 1950

a) The Civil law

The background of the situation in the mid-nineteenth century has already been presented in the first chapter of this Part⁽¹⁾. Divorce with freedom to remarry was then unobtainable from the ecclesiastical courts which were exercising this jurisdiction. Only by special Act of Parliament a person could obtain a divorce, but this was an expensive procedure, denied to the vast majority of the people because of their circumstances⁽²⁾. This dissatisfaction, coupled with the fact that the State tended not to identify itself with the Established Church, caused a strong reaction to start developing, that jurisdiction over matrimonial matters ought to be taken altogether from the hands of the Church, which could no longer claim to be the spiritual expression of the whole nation⁽³⁾.

To investigate on proposed changes in the law a Royal Commission, therefore, was appointed in 1850, which reported in 1853 that for at least a short period of time, between 1550 and 1602⁽⁴⁾, the Church courts

1) see p. 51 The Law of Marriage and Divorce in England in 1850

2) Report of Divorce Law Commission, 1853 p. 21 where the cost of obtaining a divorce a vinculo matrimonii was estimated at approx. £ 700 to £ 800, see also p. 62 note 2

3) T.A. Lacey, op. cit. p. 179; R. Haw, op. cit. p. 157

4) C.E.F. Davies, op. cit. p. 315

were in the habit of granting divorce a vinculo, i.e. with the right to remarriage⁽¹⁾, and therefore, there was enough precedent for any secular court to issue decrees of dissolution of marriages on the ground of adultery, which was not contrary to the Matthean exception, and they suggested also that all matters relating to marriage and divorce should be transferred from ecclesiastical jurisdiction to special civil tribunals⁽²⁾.

A first attempt in 1854 to pass a Bill through Parliament on the 1853 Commission's recommendations was abandoned⁽³⁾ and a second Bill in 1856 after passing through all stages in the House of Lords⁽⁴⁾, suffered a miscarriage through the dissolution of Parliament before its second reading in the Commons⁽⁵⁾. It was on August 21st, 1857 that the Matrimonial Causes Bill passed its third reading in the House of Commons and a week later received the Royal Assent⁽⁶⁾.

1) Report of Divorce Law Commission, 1853, pp. 102-104. The Commission and the Report came to be known as the Campbell Commission or Report from the name of its Chairman, who was Lord Campbell. The argument that there was a time when the Church courts had been in the habit of granting divorce a vinculo has been questioned by many scholars and Churchmen. It was almost half a century later that careful examination of the available evidence, including the transactions of the ecclesiastical courts and the contents of a vast number of parish registers, all collected in the volume English Church Law and Divorce, led its authors (Dibdin L. and Chadwick-Healey C., London, 1912) to the conclusion that the Campbell Commission was both mistaken and ill-informed. It seems, however, that other scholars and Churchmen agree with the opinion that "from the days of Edward VI to those of James I divorce and remarriage were extremely prevalent" (Joyce, op. cit. p. 421; Atkinson, op. cit. p. 62), and it remains a fact that over the period 1715 to 1852, the total number of

What this Act did was to achieve two main objectives, on the one hand it abolished the jurisdiction of the ecclesiastical courts in matrimonial matters and set up a new court "The Court for Divorce and Matrimonial Causes" to exercise that jurisdiction with power to make five different decrees⁽⁷⁾:

- 1) a decree of nullity of marriage;
- 2) a decree in the cause of factitation of marriage;
- 3) a decree for the restitution of conjugal rights on the petition of either party;
- 4) a decree of judicial separation; and
- 5) a decree of dissolution of marriage, known also as divorce a vinculo matrimonii, which was given to a husband for his wife's adultery, or to a wife on the ground that her husband had been guilty of aggravated adultery, i.e.
 - (i) incestuous adultery,
 - (ii) bigamy with adultery,
 - (iii) rape,
 - (iv) sodomy,
 - (v) bestiality,
 - (vi) adultery coupled either with cruelty, or desertion for two years or upwards⁽⁸⁾.

marriage dissolutions through an Act of Parliament was 244 (Royal Commission on Marriage and Divorce, Report 1951-1955, p. 4) between 1670 and 1857, only 317 special Acts had passed through Parliament (Atkinson, op. cit. p. 12) and that the church had tacitly agreed that her clergy were obliged to re-marry those whose divorce had been procured by such means (The Archbishop of Canterbury, Problems of Marriage and Divorce, S.P.C.K. 1955 pp. 14 & 17; Haw, op. cit. p. 103).

- 2) Campbell report, op. cit. p. 25
- 3) R.H. Graveson, "The background of the Century" A Century of Family Law, op. cit. p. 11
- 4) ibid. p. 11
- 5) ibid. p. 11
- 6) Hansard, Parliamentary Debates, 3rd ser. vol. 147, col. 2088
- 7) Bromley, op. cit. p. 237
- 8) H.J. Wilkins, op. cit. pp. 157-158; Royal Commission Report on Marriage and Divorce, 1951-1955, op. cit. p. 4

On the other hand the 1857 Act did change the process by which a divorce was obtained from a legislative one to a judicial⁽¹⁾, but it did not change the principle on which divorce was granted, and adultery remained the sole matrimonial offence, which was regarded as the most serious ground to justify the dissolution of the marriage bond⁽²⁾. However, in that principle one sees reflected the mid-Victorian attitude to sexual morality, according to which, whilst one act of adultery by a wife was considered unforgivable and gave the husband the power to petition for divorce on that sole ground, the wife could not even rely on a series of similar associations by him, unless his adultery was aggravated by one of the aforementioned cases. Some of the reasons given for this discrimination was the view that adultery was a more serious offence on the part of the wife than of the husband, because of the risk that illegitimate children might be introduced into the family, and also that wives ought to be more ready to forgive the wrong of adultery than husbands⁽³⁾.

According to the same Act the court was given a discretionary power to refuse a decree in certain circumstances, and in particular if the petitioner was the one guilty of adultery⁽⁴⁾, or of connivance, or

1) For a full historical account see the Report of the Law of Divorce Commission, 1853; a brief account is also contained in the report of the Committee on One Parent Families, 1974, known as the Finer Report, pp. 91-96

2) Cretney, op. cit. p. 86

3) Campbell Report, para. 40; for more justifications of this discrimination see Hansard, op. cit. vol.145, col.490

condonation, or if the parties had entered into a collusion concerning the prosecution of the suit⁽¹⁾.

Also the Act provided that no clergyman was to be liable to any suit, penalty or censure for solemnising or refusing to solemnise the marriage of any divorced person. Although a clergyman might himself refuse, he was however obliged by law to permit the use of his Church by any other minister in Holy Orders, who was willing to perform such service in his Church⁽²⁾.

During the years immediately following the 1857 Act only minor amendments were made to the legislation and these were mainly procedural⁽³⁾. The Matrimonial Causes Act 1860 provided that a decree of divorce should not be made absolute until the expiration of three months to enable the good faith of the parties to be investigated⁽⁴⁾, and this period was increased to six months by the Matrimonial Causes Act of 1866⁽⁵⁾, whilst the 1884 Matrimonial Causes Act gave new significance to the procedure for restitution of conjugal rights⁽⁶⁾. This was previously the only remedy given by the ecclesiastical courts for desertion; a husband or wife in desertion was ordered to return, and disobedience was enforced by attachment which was not in the discretion of the court,

4) Matrimonial Causes Act 1857 s. 31

1) ibid. s. 30

2) ibid. s. 58

3) C.E.P. Davies op. cit. p. 317

4) ibid. p. 317

5) ibid. p. 317

6) ibid. p. 318

but issued as of right⁽¹⁾. The 1884 Act enabled a deserted wife to petition for divorce immediately, without having to wait for two years' desertion to run, provided that she had obtained a decree of restitution of conjugal rights⁽²⁾.

Compared with the pre-1858 figures⁽³⁾, the number of divorces after the passing of the 1857 Divorce Act increased from a few cases in the first years to an annual average of 400 to 500 between 1875 to 1900. Their rate of increase was as follows :

<u>Year</u>	<u>Total Number</u> ⁽⁴⁾ <u>of divorces</u>
1858	244
1860	210
1865	222
1870	264
1875	362
1880	470
1885	431
1890	534
1895	573
1900	609

By the end of the nineteenth century the widely accepted opinion seems to have been that maintainance of the institution of marriage was so essential to human society that nothing should be done to impair it⁽⁵⁾; but towards the turn of the century a more liberal view prevailed that apart from an equal treatment of men and women there should also be an

1) Davies, op. cit. p. 318

2) ibid. p. 318

3) see note 1 pp. 96-97 of this chapter

4) Marriage and Divorce, Report 1951-1955 op. cit. Appenidx II, Statistics pp. 355-356

5) Wilkins, op. cit. pp. 171-180; Davies, ibid. p. 319

extension of the grounds for divorce⁽¹⁾. Such arguments were used in the 1912 Report of a Royal Commission which was appointed in 1909 to review the divorce law. In their opinion it was "impossible to maintain a different standard of morality in the marriage relation without creating the impression that justice is denied to women"⁽²⁾, and ~~they~~^{it was} also recommended that divorce should be allowed upon grounds other than adultery, such as wilful desertion, cruelty and insanity⁽³⁾.

Cruelty had for a long time been a ground upon which divorce a mensa et thoro could be obtained in the ecclesiastical courts, and upon which judicial separation was available in the Divorce court. But judicial separation was regarded by some as a dangerous as well as an unsatisfactory remedy, and if adultery and desertion disrupted a matrimonial home, obviously cruelty would do so in an even greater measure⁽⁴⁾.

Incurable insanity presented a different problem from either desertion or cruelty, which were voluntary acts, and could be regarded broadly as matrimonial offences⁽⁵⁾, whereas insanity was an unfortunate and involuntary condition. Nevertheless, there was an increasing agreement of opinion that incurable insanity

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- 1) Davies, op. cit. pp. 319-320; Royal Commission Report 1951-1955, op. cit. p. 5
 - 2) Report of Divorce Law Commission, 1912 p. 87 (known also as the Gorell Report from its Chairman Lord Gorell)
 - 3) ibid. pp. 91-106
 - 4) ibid. p. 51
 - 5) ibid. p. 103



was itself so disruptive of family life, that divorce should be allowed upon that ground⁽¹⁾. By a majority then the Commission recommended that the grounds for divorce should be :

- (i) adultery;
- (ii) wilful desertion for three years and upwards;
- (iii) cruelty;
- (iv) incurable insanity after five years confinement;
- (v) habitual drunkenness found incurable after three years from the first order of separation, and
- (vi) imprisonment under commuted death sentence (2).

The Commission also recommended that the law should be amended so as to place the two sexes on an equal basis as regards the grounds on which divorce might be obtained; and that certain additional grounds of nullity should be introduced⁽³⁾. However, because of the first World War which intervened, and after a number of unsuccessful attempts to enact these reforms⁽⁴⁾, it took almost a quarter of a century to implement them into law. The first effective action was taken in 1923 when public attention for the removal of women's disabilities was reflected in the sphere of matrimonial law by the passing of the 1923 Matrimonial Causes Act, which removed the inequality between men and women and empowered the wife to present a petition for divorce on the ground of adultery alone by her husband without any further aggravation⁽⁵⁾.

1) Gorell Report, p. 106

2) ibid. p. 113

3) ibid. p. 113 see also pp. 92-93 of previous chapter

4) Royal Commission Report, 1951-1955, p. 5; Haw, op.cit. p.173
Marriage and the Church's Task, Report of the General Synod
Marriage Commission (CIO) 1978 p. 175

5) Matrimonial Causes Act 1923 s. 1; Royal Commission Report, 1951-1955 p. 5

So, apart from this change, the law introduced by the 1857 Divorce Act, which required adultery as a prerequisite for divorce, remained in force until 1937 when, on the basis of the 1912 Royal Commission's Recommendations, A.P. Herbert's Matrimonial Causes Act of 1937 extended the ground for divorce by allowing either spouse to base his or her petition, apart from adultery, also on one of the following grounds :

- (i) wilful desertion for three years and upwards;
- (ii) cruelty;
- (iii) incurable insanity after five years' confinement⁽¹⁾.

This last provision shows an important departure from the principle underlying the law of divorce, for whereas before 1938 it had always been necessary for the petitioner to show that the respondent had committed a matrimonial offence, a petition based upon the respondent's insanity disclosed a state of affairs not due to his or her fault, which nevertheless made it socially undesirable that the petitioner should still be tied to the respondent by marriage⁽²⁾.

Also the objectionable provision originally enacted by the Matrimonial Causes Act of 1857, whereby a clergyman refusing to solemnise the marriage of any divorced person was obliged to permit the use of his Church by any other priest who was willing to perform such service in his Church, was repealed⁽³⁾.

1) Matrimonial Causes Act 1937 ss. 2 and 3; two additional grounds which the Bill included, i.e. habitual drunkenness and imprisonment under commuted death sentence, were dropped. Royal Commission Report, 1951-1956 p. 5; Haw op.cit. p. 177

2) Bromley, op. cit. p. 238

3) Matrimonial Causes Act, 1937 s. 12; Marriage and the Church's Task, op. cit. p. 176

During the years since 1938 when the new Act came into operation the courts have been gradually and cautiously supplying the definition for each of the new grounds, which was deliberately omitted from the Act, and developing the principle applicable to them⁽¹⁾.

During this century and prior to the passing of the 1937 Matrimonial Causes Act the figures of the divorce rate were as follows :⁽²⁾

<u>Year</u>	<u>Total Number of divorces</u>
1905	752
1910	755
1915	1.143
1920	4.481
1925	2.973
1930	4.159
1935	5.157

After the passing of the 1937 Act, which came into power in 1938 the figures increased as follows⁽³⁾:

1938	9.970
1940	6.915
1945	24.857
1950	29.096

Following these important and striking figures of the divorce rate and the above exposition, it is to be noted that, the civil law of divorce in England during the period 1850 to 1950 had been twice reviewed by Royal Commissions; the one was appointed in 1850 and the other in 1909, which they reported in 1853 and 1912 respectively.

1) Davies, op. cit. p. 322

2) Marriage and Divorce, Report 1951-1955 op. cit. pp. 356-357

3) ibid. pp. 356-357 For the figures of the divorce rate after the 1857 Divorce Act until the end of the last century see p. 100

From 1858 to 1937 adultery was the sole ground of divorce in England, which constituted the principle of the matrimonial offence; whereas after 1938 three more grounds were added, namely, desertion, cruelty and insanity, which marked the decline of the principle, since it allowed for misfortune to break into the matrimonial offence doctrine⁽¹⁾.

What the attitude of the Church of England on the issue during the period 1850 to 1950 was, will be dealt with in the second part of this chapter.

1) Cretney, op. cit. p. 86

b) The attitude of the Church of England

In order to understand the official attitude of the Church of England on the question of divorce and remarriage during the period 1850 to 1950, it will be helpful to present here some of the arguments used in their speeches by the Prelates who took part in the debates for the passing of the two main divorce bills, namely, the 1857 Matrimonial Causes Act and the 1937 Matrimonial Causes Act, as well as the official pronouncements which were made by the Hameth Conferences during this period.

During the debates for the passing of the 1857 bill ⁽¹⁾ some of the Prelates opposed the measure, whilst others supported it, depending on their conviction as to whether or not marriage was dissoluble by the law of Christ. Those who voted against the second reading of the bill were ⁽²⁾ ~~the~~ ~~Bishops~~ ~~of~~ ~~:~~ ~~Durham~~, ~~Lincoln~~, ~~Oxford~~ and ~~Salisbury~~; whereas those who voted for the second reading were ⁽³⁾ : the Archbishop of Canterbury and the Bishops of St. Asaph, Bangor, Bath and Wells, Carlisle, Kilmore, Llandaff, London, Ripon and Winchester.

Walter Kerr Hamilton

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Of the first group the Bishop of Salisbury said that he was satisfied that marriage by the law of Christ was indissoluble, and that all the New Testament evidence

1) Hansard, Parliamentary Debates, Third series, 1857, vol. 145, columns 483 - 538
2) ibid. col. 538
3) ibid. col. 537

was against divorce a vinculo⁽¹⁾ :

" He agreed with the view that man and woman should be placed upon the same level and that an indulgence should not be allowed to the man which was denied to the woman"(2).

" If reference was to be made to the history of the Church, the authority of the Fathers and of the Great Councils, it would be found to go for the most part in the same direction. He could produce, he said, the strongest assertions by great authorities in every century of the Christian Church, including St. Augustine, that it was not lawful so to separate husband and wife that they might re-marry"(3).

" The law of England before the Reformation was in agreement with the rule expounded by Augustine and though at the time of the Reformation it was proposed in the Reformatio Legum to alter that law, the alteration, he was thankful to say, was not effected"(4).

" He agreed that the poorest man was equally entitled with the richest nobleman to the privileges of Parliament. But he believed that these were not founded on the word of God, and if they were extended to the poor man, so far from giving him a blessing, they would poison the happiness of his home"(5).

" He did not question the power or right of the House to vindicate the supremacy of the law of the land and to make enactments for all the members of the State, but he hoped they would remember that the law of the Church did not recognise the dissolubility of the marriage tie; and that questions of conscience must arise amongst the clergy"(6).

" He most thoroughly admitted that next to the great function of the Church, there was no duty more holy or more sacred than that of a legislator"(7).

He ended by saying that whether he looked at the bill as a Member of the Legislature or as a Pastor of the Church of God, he considered the step, they were asked to take as a downward step and felt that it was his duty to oppose

1) Hansard, ibid. vol. 145, col. 516

2) ibid. col. 518

3) ibid. col. 518

4) ibid. col. 518

5) ibid. col. 519

6) ibid. col. 520

7) ibid. col. 521

the second reading and to resist this change of the old law of the Church and State of England⁽¹⁾.

amuel Wilberforce.

*
The Bishop of Oxford said, that when he addressed the House upon the same question on a previous occasion, he stated that he felt some difficulty in resting his opposition to the measure, on the ground of Divine prohibition. Since then he had applied himself with all the diligence he could command to the study of the subject now under consideration⁽²⁾.

" The Apostolical canons laid it down distinctly that no marriage could be so dissolved as that the parties could marry again in the lifetime of each other. Justin Martyr, St. Innocent, the Council of Carthage, 407 years after the death of our Lord, St. Jerome and St. Chrysostom all held this language, and St. Augustine over and over again said the same"⁽³⁾.

" The bill was one of those haphazard pieces of legislation which changed great institutions, without seeing the end of what it proposed, and which never failed to involve the people subjected to them in many and serious difficulties. Therefore, believing -that the bill contradicted, certainly and unnecessarily, one important fact of the teaching of our Lord,
- that it probably contradicted another,
- that it made provision for all kinds of future entanglements,
- that it professed to give relief to persons whom it would never reach, and
- that it left the question of marriage in a hopeless state of confusion,
he entreated their Lordships to pause before they took one step in advance, and to vote with him that the bill be read a second time that day six months"⁽⁴⁾.

John Jackson

*
The Bishop of Lincoln, who also voted against the second reading of the bill said :

1) Hansard, op. cit. vol. 145, col. 522
2) ibid. col. 523
3) ibid. col. 525
4) ibid. col. 531

" I believe that my right Rev. Brethren are all agreed (with the exception of my right Rev. Brother on my left, the Bishop of Salisbury) that divorce is permitted in Scripture in the case of the adultery of the wife. We all agree, as far as I am aware, that it is not permitted to the divorced adulteress to marry again -at any rate with the partner of her guilt"(1).

" This prohibition I, for my part, consider so essential and so important to public morality, that I find myself obliged to vote against the second reading of a Bill which omits to provide for it"(2).

" Legislators, must not be optimists. They must treat human nature, not as it might be, not as it ought to be, but as it is. And taking it as it is, can we doubt that the permission to the adulterous parties to marry, will greatly increase the temptation to adultery ?"(3)

" Let the people understand that adultery is not a foible to be treated lightly, nor a fault to be compensated by a money fine, but a crime against the laws of man, as well as a sin against the laws of God"(4).

Thomas Charles Longley

*

The Bishop of Durham concurred with what had been said by his right Rev. Brethren, and as the law of the Church and the common law of England were both in harmony in proclaiming marriage to be indissoluble, he should vote against the second reading of the Bill(5).

From the group of the Prelates who spoke in support of the second reading of the Bill the Archbishop of Canterbury* said that he had always felt it that in legislating about marriage they could appeal to the Divine Law and proceed as far as it allows to proceed and stop when it directs them to stop(6).

John Bird Sumner

1) Hansard, ibid. col. 535
2) ibid. col. 536
3) ibid. col. 536
4) ibid. col. 537
5) ibid. col. 522
6) ibid. col. 495

" According to the general tenor of the Divine Law marriage once contracted was designed to be indissoluble saving for one cause which destroyed the purpose and intent of marriage -saving for the cause of unfaithfulness. For that cause it was declared lawful for a man to put away his wife, and by parity of reasoning it would be lawful for a woman to put away her husband. He regretted that the Bill did not stop there. That one section of the Bill permitted re-marriage of the guilty party, contrary to the Divine Law"(1).

" He believed that they (the Lords) would best consult the interests of morality and the comforts of social life if in legislating on this delicate subject they adhered closely to the principle which Scripture had laid down"(2).

On these grounds the Archbishop of Canterbury voted for the second reading of the Bill, but he made it quite clear that he was going to oppose in Committee the clause which permitted the guilty parties to be united in legal marriage"(3).

me: Colquhoun Campbell

*
The Bishop of Bangor addressed a few observations to the House in a very low tone, and was understood to concur in the views of the Most Rev. Primate(4).

Alfred Ollivant

*
The Bishop of Llandaff said that he felt it was not in his power to support the amendment made by the Bishop of Oxford to postpone the second reading of the Bill for six months. Though he had objections to some portions of the Bill, he stated that he was going to vote for its second reading(5).

1) Hansard, ibid. col. 495
2) ibid. col. 496
3) ibid. col. 496
4) ibid. col. 522
5) ibid. col. 522

Archibald Campbell Tait

*
The Bishop of London stated the reasons which induced him to support the Bill and refuted the arguments of those who were declaring only formally the doctrine of indissolubility. He thought that the argument, derived from the Scriptures was one which could very readily be ascertained.

" The Sermon on the Mount, contained an assertion which he believed every Protestant Church regarded as decisive upon the question. They must remember that general statements were seldom to be taken as holding in all cases. If all children are told they should honour their parents, it did not preclude instances of parents being wholly undeserving of the honour of their children. If there should be no separation between husband and wife, there might still be cases of such foul iniquity as to effect the utter disruption of the marriage tie"(1).

As to the testimony of the Fathers of the Church, he believed there was scarcely any subject on which a whole string of the Fathers could not be brought on one side, and a whole string upon the other(2).

" When it was so easy in practice to dissolve marriage by making it invalid, they could hardly wonder that no difficulty was found in declaring it to be formally indissoluble"(3).

" It was said that the law of the Church of England was that marriage was indissoluble. Of course there was no provision for the dissolution of marriage, but he was not aware of any authority for this broad statement, and those who argued from the fact that there was no provision for divorce without an Act of Parliament to the doctrine that marriage was held to be altogether indissoluble, greatly overstated the case. If such were the law of the Church of England, why were the clergy called upon to re-marry persons whose marriages had been dissolved by Private Acts ? which had been in action for the last 150 years"(4).

1) Hansard, ibid. col. 532

2) ibid. col. 532

3) ibid. col. 532

4) ibid. col. 532

" He was prepared to maintain the universal opinion that in some grave cases marriages might be dissolved and in these cases he thought it better that the dissolution should be pronounced by such a court, as was proposed by this Bill, than by Private laws. The present system was likely to do far more harm than good, and an opportunity now opened of satisfactorily settling the question upon an intelligible and religious basis. He therefore hoped their Lordships would read the Bill a second time"(1).

It was evident that the main issue which was prevailing in almost all the speeches of the Prelates was the right of the divorced parties to re-marry. By the law of the Church such marriages could not be solemnised and it was considered hard to compel clergymen who held conscientious objections on this matter to solemnise such marriages. To overcome this difficulty an amendment was secured in the House of Commons⁽²⁾ which provided that no clergyman should be compelled to celebrate the marriage of any person divorced for adultery, but he was required to permit another accredited priest, if such one could be found, to perform the service in his Church⁽³⁾. Finally the Bill was passed into law and from 1858 the Divorce Act came into force for all the people of the country. It was the main cause of conflict with the teaching of the Church which since then was involved in a new relationship with the State. This new situation obliged

1) Hansard, ibid. col. 533

2) ibid. vol. 147 col. 2061

3) Matrimonial Causes Act 1857; Hansard, ibid. col. 2061; cf Wilkins, op. cit. p. 161; Marriage and the Church's Task, op. cit. p. 176

the Bishops and the clergy to restate the ecclesiastical concept of marriage and indissolubility. The opportunity was given at the Lambeth Conference of 1888 where the problem was considered and a resolution was passed⁽¹⁾ which stated :

- (a) that divorce could be permitted only for adultery, according to the Matthean exception, and
- (b) that no remarriage of the guilty party should take place in Church during the lifetime of the innocent party⁽²⁾.

It also noted that there had always been a difference of opinion in the Church on the question whether our Lord meant to forbid marriage to the innocent party and recommended that the clergy should not refuse the Sacraments or other privileges to those who were thus married under civil sanction⁽³⁾. It may, therefore, be observed that Anglican opinion in 1888 was that divorce was to be recognised only for adultery, and that the guilty party was to be excluded altogether from remarriage in Church⁽⁴⁾.

The Lambeth Conference which met in 1908 reaffirmed the Resolution of 1888 but added that it was "undesirable that the innocent party should be remarried with the blessing of the Church"⁽⁵⁾. ~~This addition was carried~~

1) For the full text of the resolution see H.J. Wilkins, op. cit. p. 164

2) ibid. p. 164

3) ibid. p. 164

4) The Archbishop of Canterbury, op.cit. p. 17

5) Report of the 1908 Lambeth Conference, S.P.C.K.1908 pp. 55-56; Wilkins, op. cit. pp. 164-165

This addition was ^{at} carried by a narrow majority of only three votes out of a total vote of 171⁽¹⁾.

When in 1909 a Royal Commission was appointed to review the divorce law, the Church was represented by the Archbishop of York, Cosmo Lang, who together with Sir William Anson and Sir Lewis Dibdin, in a Minority Report, considered that the proposed extension of the grounds for divorce in the 1912 Report of the Royal Commission⁽²⁾ were unnecessary and might encourage collusion⁽³⁾. It is true that no immediate action was taken then, however, the recommendations of the 1912 Report continued for many years later to effect the law of the land and made more clear the divergence between the marriage conception of the Church and that of the State⁽⁴⁾.

A further reaction of the Church was made in 1917 when :

" The two Archbishops and five diocesans in company with representatives from certain other Christian denominations had signed a Memorial to resist the pressure which was being applied by a Parliamentary movement on the Government with the object of giving liberty to marry to persons who had been separated"(5).

Also in both the next Lambeth Conferences of 1920 and 1930 the doctrine of marriage as a lifelong and

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- 1) The Archbishop of Canterbury, op. cit. p. 17
 - 2) For more details regarding the recommendations of this Commission see. pp. 101ff of the present chapter.
 - 3) Report of the Royal Commission, 1912, p. 37; Report The Church and Marriage, 1935, op. cit. p. 4
 - 4) For a discussion in the divergence between these two conceptions of marriage see Haw, op. cit. pp. 185-187
 - 5) Haw, op. cit. p. 111; G.K.A. Bell, Randall Davidson, 2nd ed., Oxford, 1938, p. 991

indissoluble union was reaffirmed, and in particular the 1930 Lambeth Conference recommended :

" that the marriage of one whose former partner is still living should not be celebrated according to the rites of the Church"(1).

When in 1935 a Joint Committee of the Convocations of Canterbury and York reported on the practice of the Church on the matter, the official attitude of the Church was again made clear, as regards her discipline in the following way :

- " No marriage, it was stated, was to take place in the Church during the lifetime of a former partner; and the Church should be free to make its own regulations for its own members, more particularly with regard to
- (a) the forbidding the use of the Marriage Service of the Church in the case of either party entering into another contract of marriage during the life-time of the former spouse, and
 - (b) the admission of such persons to the Sacraments and other privileges of the Church"(2).

Such then was the official attitude of the Church of England during and after the passing of the 1857 Matrimonial Causes (Divorce) Act, and particularly towards the recommendations of the 1912 Report of the Royal Commission, which, as already has been mentioned, for many years later continued to effect the law of the land. In fact it was exactly a quarter of a century later

2) The Church and Marriage, Report of the Joint Committees of the Convocations of Canterbury and York, (S.P.C.K.) 1935, p. 22

1) The Lambeth Conferences (1867-1930), Reports of the 1920 and 1930 Conferences with selected resolutions from the Conferences of 1867, 1878, 1897 and 1908, London, S.P.C.K. 1948, pp. 164ff.; The Archbishop of Canterbury, op. cit. p. 17

when most of the 1912 recommendations of the Royal Commission were implemented through the 1937 Matrimonial Causes Act⁽¹⁾.

The Prelates who took part in the debates for the second reading of the 1937 Bill in the House of Lords were five : The Archbishops of Canterbury and York, the Bishop of St. Albans and the Bishops of Durham and Birmingham. To illustrate their attitude on that occasion some extracts will be presented here from their speeches together with the main arguments used in support of their positions. The first two abstained from voting, the Bishop of St. Albans opposed the Bill, and the other two Bishops were in its favour.

Cosmo Gordon Lang The Archbishop of Canterbury^{*} looked upon the Bill from two different points : firstly as a citizen, and then as a representative and an officer of the Church. From his first point of view he stated that the existing law of the State in the matter of divorce was proved unsatisfactory in its operation and gave rise to abuses detrimental not only to marriage itself but to public morality.⁽²⁾

" The Bill proposed some timely and valuable remedies of those abuses, and it had other useful provisions, including a reasonable and welcome relief in the conscience of the clergy. For those reasons, he said, although he hoped it might be amended in various respects in Committee, he thought as a citizen and a member of the House of Parliament, that it was entitled to the careful consideration of the House, and he could not, therefore, honestly vote against its second reading"⁽³⁾.

1) For more details about the 1937 Act see pp.103ff

2) Hansard, op. cit. vol. 105 col. 743-751

3) ibid. col. 744

But on the other hand, the Archbishop could not divest himself of his responsibilities as a representative and an officer of the Church. In his judgement, divorce and certainly re-marriage after divorce was inconsistent with the principles laid down by Christ and accepted by the Church in her own law and formularies.

" It may be, he said, that the State was unable to impose the Christian principles of marriage by law upon a population which was only partially or imperfectly Christian, but for that very reason it was of the greater importance that the Church should maintain those principles for its own members and uphold its own standard for the good of the whole community. In view, therefore, of the position which I hold in the Church, I cannot take the responsibility of seeming to promote legislation, which in some of its principal proposals is inconsistent with those principles and with that standard. Thus I cannot give a vote for the second reading of the Bill. In those circumstances if a division is challenged, in that division I can take no part"(1).

William Temple

The same attitude was taken by the Archbishop of York,
who although in his speech was largely in favour and believed that it was desirable that this Bill should pass into law, however, he did not think it was appropriate that an occupant of the Bishops' Bench should vote for it(2).

" For a long time past, he said, everybody acted on the assumption that the law of the State and the law of the Church in this matter should be the same. But what he desired to suggest was that the grounds on which the law of the State and the Church should be determined, should certainly be different, and it was at least possible that the difference in grounds may lead to a difference in the law itself. Because the function of the Church

1) Hansard, op. cit. vol. 105, col. 744

2) ibid. cols. 781-784

and of the State in relation to the promotion of human welfare at large are not the same. He submitted his position in the words of F.D. Maurice :

'The office of the Nation is by stern and righteous punishment to restrain man's self-will when it breaks out into acts; the office of the Church is, by gracious and loving methods, to bring out the true free will of which it is the base counterfeit'(1).

" If it were true that the passing of this Bill would lead to the damage of public morals, no doubt it would be our duty to resist it, but as I have indicated, I am persuaded that it ought to be passed, and for the reason that I believe it will ipmrove rather than damage public morals"(2).

" That view, however, must not be held in any way to modify the right and the obligation of the Church to uphold its own ideal and to require the conformity to that ideal of those who would be its full members. Church and State have no doubt one service, namely, the service of the people, to be rendered according to their several trusts, but the trusts are several, and they will render that service best, not by making their functions identical but, by pursuing their several functions in full and friendly association, each with complete respect for the liberty of the other"(3).

On these grounds the Archbishop of York also abstained from voting for or against the Bill, although from what he said, he made it quite clear that he was convinced heartily that the Bill should be passed into law⁽⁴⁾.

The only Bishop who spoke and voted against the *Michael Bolton Furse* Bill was the Bishop of St. Albans^{*}(5). For him the real question at issue was whether the Bill was to reduce divorce and advance the objects stated in the Preamble

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- 1) Hansard, op. cit. col. 782
 - 2) ibid. col. 783
 - 3) ibid. col. 784
 - 4) ibid. col. 784
 - 5) ibid. cols. 761-765

of the Form of Solemnization of Holy Matrimony "for the true support of marriage, the protection of children and the removal of hardships"⁽¹⁾. For his part, he said, he was absolutely convinced that in the long run it will have precisely the opposite result.

" I believe the Bill will weaken instead of strengthen the institution of marriage, it will lead to an increasing number of divorces and quite obviously expose more children than are exposed to-day to the dangers and the ill consequences that come from broken-up homes. I believe that this Bill will create more hard cases and illicit unions and ultimately collusion in divorce"⁽²⁾.

He went on to state the Christian view of marriage as a life-long, indissoluble union between one man and one woman to the exclusion of all others, which is not merely based on a text or two taken from the New Testament, but he suggested, it was part and parcel of the original plan of the Creator in bringing man into the world and in fulfilling His purpose that the whole of the human race should have the fullest possible life⁽³⁾.

" I know that your Lordships will agree that marriage is an institution that ought to be maintained, but it is, I submit, fundamental not only to the well being of this nation, but to the well being of all the nations, of the whole of the human race"⁽⁴⁾.

On these grounds he opposed and voted against the Bill.

1) Hansard, op. cit. col. 761
 2) ibid. cols. 761-762
 3) ibid. col. 762
 4) ibid. col. 763

The reference of The Bishop of St Albans to The Preamble is incorrect.

The two Bishops who spoke and voted for the Bill were those of Durham and Birmingham. The Bishop of

Robert Hensley Henson ^{*}Durham (1) defined his position by putting to himself some questions :

" Is the Bill needed ? Yes, he said, it is needed, and there is a very real demand for this Bill. If you have no experience to provide you with that answer, then, be at pain to read carefully the great Report of the Commission"(2).

" Will this Bill, if it be passed, bring the law of England into conflict with the law of Christ ?" His answer was : " The Bill, if it were passed into law, so far from bringing the law of England into conflict with the law of Christ, would bring the law of England into deeper and truer harmony with that law"(3).

" If the Bill be passed, will it lead to a lower standard of marriage and the contracting of marriage ?"(4)

He believed that the Bill would remedy a great many hard cases which a just law ought to be able to remedy. To give his answer to this question he went to the plain purposes set out in the Preface to the marriage service in the Book of Common Prayer, according to which marriage is intended for the continuance of the human race, the procreation of children and also to provide that fellowship, society, help and comfort, which men and women, by the Creator's ordinance really need (5).

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- 1) Hansard, op. cit. cols 768-774
 - 2) ibid. col. 769
 - 3) ibid. cols. 769-770
 - 4) ibid. col. 770
 - 5) ibid. col. 770

" None of these purposes can possibly be fulfilled if the parties drift apart, if the desertion has continued year after year, if the cruelty is such, that it is not safe or reasonable to expect these people to live together, or if insanity has clouded the mind or disordered the tastes and affections so that the unfortunate partner, who is insane may be locked away under guard, and may continue in that state until death. It is impossible in these cases to see what there is, which has survived this marriage"(1).

Then he went on to criticise the Archbishop's point that our Lord's teaching as certified by the critical scholars of that time is represented by the teaching in St. Mark's Gospel.

" I would allow myself this observation, he said. So far as I know, the Church of Christ has never allowed itself to draw a distinction in religious authority between one canonical Gospel and another. I would ask him : 'Are you then prepared to minimise the authority of the first of the four canonical Gospels, and is it not the case that it is that Gospel which authorises you to use the Trinitarian form in Baptism ?' So it is apparant that it is a very risky ground you get on when you begin to trust the critical faculty into canonical authority"(2).

The Bishop of Durham preferred to stand on the general position of the Church and to say that our Lord's teaching, as is transmitted in the four canonical Gospels, teaches with every adequate reason that the marriage union is dissoluble(3).

" If that be not so, then it is incumbent upon the Most Reverend Primate to explain away what St. Matthew says, and I submit, and I think no one can challenge the statement, that even if that clause, 'saving for fornication' is read

1) Hansard op. cit. cols 769-770

2) ibid. col. 771

3) ibid. col. 771

in the strict sense, we are entitled to say that it is yet a canonical version of the Apostolic understanding of Christ's words. It is the most authoritative word of exegesis that you can find and we are on the strongest possible ground when we say that we are entitled to claim that our blessed Lord, as understood by the historic Church, did authorise in certain circumstances the dissolution of the marriage union"(1).

The corruptiest communities known to the world, he said, have been those in which divorce was absolutely prohibited.

" If the number of divorces were a safe indication of social morals, it were indeed possible to make the whole community pure at a stroke by prohibiting divorce. True it is that divorce may mean not a desire to degrade, but to raise the standard of human life"(2).

He urged the House to take the view that they were enacting in the spirit and mind of Him Who, confronted by another law, said 'The Sabbath was made for man and not man for Sabbath'(3).

" We should say, 'the marriage union is made for man, not man for the marriage union' and that we have no ground to withhold the liberty of divorce"(4).

For all these reasons and on these grounds the Bishop of Durham stated that he was going to support and vote for the Bill(5).

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- 1) Hansard, op. cit. cols. 771-772
 - 2) ibid. cols. 772-773
 - 3) ibid. col. 774
 - 4) ibid. col. 774
 - 5) ibid., col. 774

Ernest William Barnes

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The Bishop of Birmingham (1) stated forthright his intention to vote for the second reading of the Bill because it will bring the marriage law into harmony with opinions held by a majority of enlightened Christian people in the country, and because he was convinced that it will lessen the number of irregular unions among working people (2).

He asserted that from the New Testament itself we can gather that, in the first century of the Christian era, complete divorce was allowed in the Christian community both for adultery and also when a pagan partner broke the union (3).

" Further, he said, it cannot be denied by the historians that in the Christian East complete divorce has always existed. But you will say that the Western Church freed itself in early times from all exceptions and preserved Christ's ideal inviolate in its legislation. In theory, yes; but of course, a safety valve was found in a practice of nullity, a practice that became so widespread as to be the equivalent of divorce at the pleasure of the stronger partner. The grounds of nullity were at one time so extensive that no marriage was safe from possible rupture" (4).

" But I will pass from the Reformers to the year 1670 when a Private Act of Parliament revived an old precedent by allowing a Peer to re-marry after obtaining a divorce. Did the English Bishops in this House indignantly protest? Two of the most distinguished Bishops, the High Churchman Cosin of Durham and William of Chester, sometime Secretary of the Royal Society, voted for the Bill. Some 450 similar Acts were passed during the next two centuries. There is no evidence whatever that

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- 1) Hansard, op. cit. cols 812-818
 - 2) ibid. col. 812
 - 3) ibid. col. 812
 - 4) ibid. col. 813

the English Bishops made it a principle to oppose these measures. When at length the Divorce Bill of 1857 came up for its second reading in this House, nine Bishops voted in the affirmative. Among them were Sumner, then Archbishop of Canterbury, and his great successor Tait. Finally in this hurriedly historical survey, in 1920 Archbishop Davidson in this House allowed, to the discomfort of some of his allies that a complete divorce might be granted for adultery"(1).

He then briefly referred to two other points :

- (a) that during the first five years of marriage a petitioner for divorce must, at least, be able to apply to the court on the ground that special circumstances existed⁽²⁾; and
- (b) that he was in favour of the provision that insanity should be a ground for divorce because, he said :

" The eugenist, anxious for the future of the race, the geneticist with his special knowledge, regard insanity with a gravity not recognised by some who have taken part in this debate"(3).

He concluded by adding that he will give general support to this Bill, not as a concession to be made to a semi-pagan community, but because it seemed to him to be the legislation in accordance with the spirit of Christ⁽⁴⁾.

It cannot be denied that the stand taken by the Bishop of St. Albans was consistent with the traditional and official attitude of the Church of England, which

1) Hansard, op. cit. vol. 105 col. 815
2) ibid. col. 817
3) ibid. col. 817
4) ibid. col. 818

down the centuries had preserved the doctrine of indissolubility, held by Western Christendom from the early times.

At the same time, there is no doubt that, the Bishops of Durham and Birmingham were also quite strong and convincing in their arguments that the law ought to be able to remedy some unfortunate cases.

However, the attitude of the two Archbishops of Canterbury and York in abstaining to vote for or against the Bill is indicative of the existing conflict and tension of spiritual and temporal laws and loyalties.

It is perhaps worth noting here the observation made by Lord Gorell⁽¹⁾ at the concluding stages of the debates for the passing of the 1937 Matrimonial Causes Act :

- " There are, he said, three distinct and different Christian opinions within the Church:
- (a) that marriage is indissoluble;
 - (b) that it is dissoluble only on the ground of adultery; and
 - (c) taking note of a great and growing weight of opinion, that it is dissoluble wherever in fact the ideal has hopelessly broken down"(2).

1) He was the son of Lord Gorell who was the Chairman of the 1909 Royal Commission on whose recommendations the 1937 Matrimonial Causes Act was mainly based; see pp. 101ff

2) Hansard, op. cit. vol. 105 col. 845

After the passing of the 1937 Act the position of the Church of England was made clear in the following resolution which was passed by the Convocation of Canterbury in June 1938⁽¹⁾ :

" That in order to maintain the principle of lifelong obligation which is inherent in every legally contracted marriage and is expressed in the plainest terms in the Marriage Service, the Church should not allow the use of that Service in the case of anyone who has a former partner still living"(2).

Further evidence could be found in the Report of the Archbishops' Commission on Canon Law, 1947 and in the Resolutions of the Lambeth Conference 1948.

The proposed new Canon XXXVI of the Archbishops' Commission on Canon Law 1947, stated :

" The Church of England affirms, as our Lord's principle and standard of marriage, a lifelong and indissoluble union, for better or for worse, till death them depart, of one man with one woman, to the exclusion of all others on either side"(3).

In section 2 of the same proposed Canon it was suggested that the Bishop with his Chancellor should be empowered to allow either of the parties to a marriage dissolved by secular law to be married to another person, according to the rites and ceremonies of the Church of England, if the Bishop was satisfied that there were good grounds upon which such marriage, could, instead of being dissolved have been declared

1) Promulgated as an Act of Convocation in 1957, The Chronicle of Convocation, No 2 (1957) p. 205f

2) A similar resolution in substantial agreement was passed also by the Convocation of York at the same time.

3) The Canon Law of The Church of England, op. cit. p. 125

to be null and void⁽¹⁾. This proposal, however, was never accepted by the Convocations and is excluded from the present Canons of the Church of England⁽²⁾.

The official attitude of the Church of England in 1950 could be sufficiently described by the following extract from the Report of the Lambeth Conference held in 1948 :

" The Church has a primary duty in the pastoral care of those who are married or are about to be married, in the exercise of discipline for upholding Christian standards. To this end regular and systematic instruction of the congregation on the meaning and responsibilities of marriage, and particular preparation of engaged persons, should be regarded as a normal pastoral duty in every parish, and all parish priests should be equipped for these tasks.

Confirmed members of the Church who marry contrary to the law of the Church, should be regarded as subject to the discipline of the Church in respect of admission to Holy Communion. Their admission to Holy Communion lies within the discretion of the Bishop, due regard being had to their own spiritual good and the avoidance of scandal to others.

In every case where a person with a former partner still living is married and desires to be admitted to Holy Communion the case should be referred to the Bishop, subject to provincial or regional regulations"⁽³⁾.

Briefly stated the progress and development of the law of divorce in England during the period 1850 to 1950 could be summarised as follows :

Before 1857 there was no legal provision in Church or common law for divorce, except by special Act of

1) ibid. p. 126 where it is mentioned that there were three notable dissensions from the members of the Commission regarding this proposal.

2) Canon B 30 'Of Holy Matrimony', The Canons of the Church of England, op. cit. p. 22

3) Lambeth Conference 1948, Report, S.P.C.K. pp.96-105

Parliament. With the passing of the 1857 Divorce Act the law of the land departed from the old law of the Church, which recognised only separation a mensa et thoro and forbade remarriage during the lifetime of a former spouse. The law of 1857, being based explicitly on the principle of the matrimonial offence of the wife's adultery (or the husband's aggravated adultery), remained unaltered until 1937, when the Matrimonial Causes Act of that year extended the matrimonial offence so as to include desertion, cruelty and incurable insanity.

In tracing the official attitude of the Church of England during this period, it may be observed that in 1857 the leaders of the Church accepted the fact (not without protest), that clergymen should marry the innocent party, and it seems that in certain cases they could also marry the guilty party after a divorce suit⁽¹⁾. Officially, however, the Church permitted divorce only for adultery, and excluded altogether the guilty party from remarriage in Church⁽²⁾. But there had always been a difference of opinion on the question as to whether our Lord meant to forbid marriage to the innocent party⁽³⁾.

By the beginning of the present century various factors contributed to a significant change in the

1) The Archbishop of Canterbury, op. cit. p. 17

2) ibid. p. 17; Resolution 4 of the 1888 Lambeth Conference

3) Resolution 4 (c) of the 1888 and resolution 39 of the 1909 Lambeth Conferences; K.Kirk, op. cit. p. 112

Church's attitude on divorce and remarriage. On the one hand the development of the New Testament criticism and theological scholarship tended to reject the authenticity of the Matthean exception clause⁽¹⁾, whilst on the other hand the rising tide of divorces and the social evils springing from broken homes, together with the ambiguity over the genuine innocence of the innocent party⁽²⁾ to a divorce case, all these which were threatening the Christian conception of marriage as a lifelong union, forced the Church of England to reconsider her position, and to adopt an uncompromising line. Consequently all second marriages in Church were indiscriminately forbidden for divorced persons, whose former partners were still living.

This rigid regulation was repeatedly pronounced and retained as the official attitude of the Church of England throughout the first half of this century. However, the signs of uneasiness and tension, never ceased to appear as the inevitable corollary of marriage breakdown. Constant pastoral problems have been calling for the Church's concern and compassionate reconsideration of her attitude towards those in pain, in order to help them rediscover the will of God for their future. This challenge, directed to the Church on pastoral grounds was to increase in the second half of this century and it looks as if the Church of England is at present in the process of a further stage of development, which will be traced in the next chapter.

1) Bishop Gore, The Question of Divorce, 1911 p. 23

2) Due to fixed and arranged adulteries; How, op.cit. p.175

5. Further developments from 1950 to the present time

On September 8th, 1951 a Royal Commission was appointed to inquire into the law concerning divorce and other matrimonial causes and to consider

" whether any change should be made in the law or its administration, having in mind the need to promote and maintain healthy and happy married life and to safeguard the interests and well-being of children"(1).

A number of people representing various bodies whose activities appeared to have a special bearing on the inquiry were invited to give evidence⁽²⁾. On behalf of the Church of England the Archbishop of Canterbury laid evidence before the Royal Commission, which subsequently was published under the title "The Church and Marriage"⁽³⁾.

1) Royal Commission on Marriage and Divorce, Report 1951-1955, London, H.M.S.O. 1956 p. iii. This was the third Royal Commission which was appointed within a century to review the law of Marriage and Divorce, the other two having been set up in 1850 and 1909 (see pp. 95-98 and 101ff). The reason for setting up this Royal Commission was prompted after the House of Commons had given a second reading to a Bill introduced by Mrs Eirene White, M.P. to permit divorce at the option of either spouse, after a separation of not less than seven years (Report 1951-1955, para. 63, p. 13). Under pressure that the law should not change without proper and thorough inquiry, the Bill was withdrawn upon the Government's undertaking to set up a Royal Commission. see Hansard, op. cit. vol. 485 cols 926-1018 (1951); also, Marriage, Divorce and the Royal Commission, A Study outline of the Report of the Royal Commission, (C.I.B.) 1956 p. 5 and Cretney, op. cit. p. 89. The Commission was put under the Chairmanship of Baron Morton hence it is also known as the Morton Commission or Report

2) Morton Report, p. 1

3) Published by the Church Information Board in 1952 and in a second edition in 1954, including additional answers by the Archbishop of Canterbury to subsequent questions by members of the Royal Commission, The Church and Marriage, C.I.B. 1954

In its Report, which was published in 1956⁽¹⁾, all, except one, of the nineteen members of the Royal Commission, were in favour of retaining the principle of matrimonial offence⁽²⁾; nine were opposed to the introduction of breakdown as an alternative ground for divorce,⁽³⁾ whilst the other nine members were prepared to adopt the principle of breakdown to a limited extent, i.e. either party could obtain a divorce, if there had been a period of 7 years' separation and the other party did not object⁽⁴⁾.

The Commission was very fiercely attacked⁽⁵⁾ and the fact that it was so divided on its principal recommendation did nothing to inhibit divorce reformers⁽⁶⁾.

During that time the attitude and discipline of the Church of England continued to be the same as in the past, which was total ban on all marriages in Church after divorce, when a partner was still living. This practice, which had been defined in four Resolutions in 1938⁽⁷⁾, was promulgated and restated as an Act of Convocation in 1957 according to which :

" Marriage is in its true principle a personal union... indissoluble save by death; and as a consequence, remarriage after divorce during the lifetime of a former partner always involves

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- 1) Report 1951-1955, op. cit. CMD. 9678, H.M.S.O. 1956
 - 2) ibid. para. 65 p. 13
 - 3) ibid. para. 69 pp. 14-15
 - 4) ibid. para. 70 pp. 22-23
 - 5) O.R. Mc Gregor, Divorce in England, 1957
 - 6) Cretney, op. cit. p. 89
 - 7) Marriage and the Church's Task, op. cit. p. 2

a departure from the principles of true marriage.. and that in order to maintain the principle of lifelong obligation which is inherent in every legally contracted marriage and is expressed in the plainest terms in the Marriage Service, the Church should not allow the use of that Service in the case of anyone who has a partner still living.

Under certain conditions, however, recognising that the Church's pastoral care for all people includes those who during the lifetime of a former partner, contract a second union, divorced and remarried persons may be admitted to Holy Communion" (1).

On the basis of these resolutions the 1958 Lambeth Conference on the one hand recognised that divorce is granted by the secular authority on grounds which the Church cannot acknowledge⁽²⁾, and recognised also that in certain cases where a decree of divorce has been sought and may even have been given, there may in fact have been no marriage bond in the eyes of the Church⁽³⁾. It therefore suggested an investigation into the idea and practice of nullity⁽⁴⁾. On the other hand it recommended the denial of remarriage in Church to any divorced person with a former partner still living; and commended for further study the Resolutions of the 1948 Lambeth Conference⁽⁵⁾, "a fact which of itself suggests that their content and implication was not judged to be altogether satisfactory"⁽⁶⁾.

1) The Chronicle of Convocation, No 2 (1957) p. 205f

2) The Lambeth Conference 1958, S.P.C.K. 1958, Resolution 118 p. 1. 58

3) ibid. Resolution 118 p. 1. 58

4) ibid. Resolution 118 p. 1. 58

5) ibid. Resolution 119 p. 1. 58

6) Marriage, Divorce and the Church, Report of a Commission appointed by the Archbishop of Canterbury to prepare a statement on the Christian Doctrine of Marriage, S.P.C.K. 1971, p. 4

In the mean time, the fact that the Morton Report, as already mentioned, was divided on its principal recommendations did nothing to stop those who wanted to reform the law⁽¹⁾. In 1963 Mr Leo Abse, M.P. presented in the House of Commons a Bill, which amongst other proposals would have allowed divorce after seven years' separation⁽²⁾. Eventually, by persuading him to withdraw⁽³⁾ this controversial clause Mr Abse enabled the rest of the Bill to get on the Statute book as The Matrimonial Causes Act of 1963, which contained provisions designed to facilitate reconciliation, by making collusion into a discretionary rather than an absolute bar, and restricting the scope of the bar of condonation⁽⁴⁾. In those cases, where the court had discretion to refuse a divorce because the petitioner had committed a matrimonial offence, it became increasingly accepted that no public interest was served by keeping legally in existence a marriage which had in fact broken down⁽⁵⁾.

Under such growing pressure for reform of the civil law, the then Archbishop of Canterbury (Michael Ramsey) announced in 1964 in the House of Lords⁽⁶⁾ the appointment of a Committee to consider the law of divorce in contemporary society and to make recommendations on

1) Cretney, op. cit. p. 89

2) ibid. p. 90

3) Bromley, op. cit. p. 239

4) The Bill amended the law of collusion, and provided the so-called "kiss-and-make-up" procedure, Cretney, ibid. p. 89

5) The fact that both parties agreed in wanting a divorce was no longer a sufficient reason in preventing their obtaining one, Cretney, ibid. p. 89

6) Hansard, op. cit. vol. 250 col. 1547

which the State's law of divorce could be made to work more adequately. The Committee, which was under the chairmanship of the Bishop of Exeter, produced its Report Putting Asunder in 1966⁽¹⁾ and was careful to distinguish their task of making a Christian proposal for secular law and not for the Church's own discipline for its own members⁽²⁾. The Committee favoured, as the lesser of two evils⁽³⁾, the substitution of the doctrine of breakdown for that of the matrimonial offence⁽⁴⁾, which they argued must be the sole ground of divorce, and considered that the court, in order to be guarded against possible abuse, should carry out a detailed inquest into the alleged fact and causes of the death of a marriage relationship⁽⁵⁾.

" It would have to be made possible for the court to inquire effectively into what attempts at reconciliation had been made, into the feasibility of further attempts, into the acts, events, and circumstances, alleged to have destroyed the marriage, into the truth of statements made (especially in uncontested cases) and into all matters bearing upon the determination of public interest"⁽⁶⁾.

They further recommended that a decree should be refused if it would be unjust because of the petitioner's conduct⁽⁷⁾, if both parties had combined to deceive the court⁽⁸⁾, if it would be contrary to the public interest

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- 1) Putting Asunder, A Divorce Law for Contemporary Society S.P.C.K. 1966
 - 2) ibid. para. 6
 - 3) ibid. para. 68
 - 4) ibid. para. 55
 - 5) ibid. para. 84
 - 6) ibid. para. 84
 - 7) ibid. para. 66
 - 8) ibid. para. 97

in justice and in protecting the institution of marriage⁽¹⁾.

They also made detailed proposals :

- (a) for securing the welfare of children⁽²⁾; and
- (b) for exploring any prospects of reconciliation⁽³⁾.

The Report Putting Asunder was then referred to the Law Commission, established by Parliament to review the law, who in turn reported in 'Reform of the ground of Divorce : The Field of Choice'⁽⁴⁾. Their comments were appreciative of the argument for establishing the divorce law upon a new ground, but critical of the proposed court procedure⁽⁵⁾. They concluded that the 'Field of Choice' was between the following three alternatives :

- "(a) Breakdown without inquest. A modification of the breakdown principle proposed in 'Putting Asunder'.
- (b) Divorce by Consent, which was considered practicable only as an additional and not a sole comprehensive ground.
- (c) The separation ground, which was introducing a period of separation irrespective of which party was at fault, enabling the law in this way for the application of the breakdown principle"⁽⁶⁾.

The two documents, Putting Asunder and The Field of Choice, were debated together in the House of Lords⁽⁷⁾ and the Government of the day made it known that it would support legislation to embody an acceptable compromise,

1) Putting Asunder, op. cit. para. 66

2) ibid. para. 92

3) ibid. paras. 38, 90

4) Reform of the Ground of Divorce : The Field of Choice, H.M.S.O. 1966, Cmd 3123

5) ibid. para. 2; cf Marriage, Divorce and the Church, op. cit. p. 2

6) Field of Choice, pp. 54-55; for a fuller elaboration see ibid. paras 71-105; cf Cretney, op. cit. pp. 93-94

accommodating the principle expounded in Putting Asunder, which in the opinion of the Law Commission would not make divorce proceedings more expensive or protracted than they were already⁽¹⁾.

A compromise between the views put forward by the Archbishop's group and the Law Commission was the passing of the Divorce Reform Act in 1969, which introduced the principle that "the sole ground on which a petition for divorce may be presented to the court by either party to a marriage shall be that the marriage has broken down irretrievably"⁽²⁾. All the old grounds for divorce were abolished and replaced by this one ground, which may be established only by proof of one or more of five 'facts' set out in the Act⁽³⁾. Three of these facts are similar to the old matrimonial offences of : adultery, cruelty and desertion and impute fault to the respondent. The other two are periods of separation : two years if the respondent consents to the granting of the decree, and five years if he or she does not⁽⁴⁾.

Because of the fears expressed that parties (particularly wives) divorced against their will could well suffer financial hardship, the Act did not come

1) Marriage, Divorce and the Church op. cit. p. 2 para.3

2) Divorce Reform Act 1969 s. 1

3) ibid. s. 1 (2); Bromley, op. cit. p. 240

4) ibid. p. 240

into force until 1st January 1971⁽¹⁾. This enabled Parliament to pass the Matrimonial Proceedings and Property Act of 1970, which reformed the law relating to the powers of the High Court and divorce county courts, to grant financial relief for the protection of the spouses and the children of the family⁽²⁾. Furthermore on the recommendation of the Law Commission the previous legislation was brought together in one Act, the Matrimonial Causes Act of 1973. Essentially this was a consolidating statute which repealed the 1969 Divorce Reform Act and the 1971 Nullity of Marriage Act in their entirety, together with most of the provisions of previous Matrimonial Causes Acts and made only minor changes in the existing law⁽³⁾. This new Act which is at present in force regulating all matters related to marriage and divorce⁽⁴⁾ came into operation on 1st January 1974 and it provides that :

" On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent"⁽⁵⁾.

1) Bromley, op. cit. p. 240

2) ibid. 241; Cretney op. cit. p. 98

3) Bromley, ibid. p. 241

4) ibid. p. 241; Cretney, op. cit. p. 98; Atkinson, op. cit. p. 14

5) Matrimonial Causes Act 1973 s. 1 (3), London, H.M.S.O. Reprinted 1976, p. 2; Cretney, op. cit. p. 103

(a) In the case of adultery it is necessary to prove :

- (i) the fact of the respondent's adultery, and
- (ii) that the petitioner finds it intolerable to live with the respondent (1).

(b) In the case of cruelty under the old law of divorce this was a ground for divorce and in order to establish the offence the petitioner had to prove unbearable conduct from the part of the respondent and produce evidence of general injury to health. The new Act introduced the fact that "the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him or her"⁽²⁾.

(c) Under the old law desertion without cause for a period of at least three years immediately preceding the presentation of the petition was a ground for divorce. Under the new Act, to establish the fact of desertion as evidence of irretrievable breakdown, it is necessary to show :

- (i) that the respondent has deserted the petitioner, and
- (ii) that he/she has done so for a continuous period of two years, which
- (iii) immediately preceded the presentation of the petition (3).

(d) The provisions of living apart establish the real novelty of the new law⁽⁴⁾ which, in effect, permit divorce by consent, and divorce of a blameless spouse

1) Matrimonial Causes Act 1973 s. 1 (2)(a)

2) ibid. s.1(2)(b)

3) ibid. s. 1 (2)(c)

4) ibid. s. 1 (2)(d) and (e)

by repudiation⁽¹⁾.

The one fact requires that the parties should have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and that the respondent consents to a decree being granted⁽²⁾.

The other fact simply requires that the parties have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition⁽³⁾.

Even if one or more of the above facts is proved, the court may, nevertheless, refuse to dissolve the marriage in the following cases :

- (1) If it is satisfied that the marriage has not been broken down irretrievably (4);
- (2) If a decree nisi has been made on the basis of two years' separation, it may be rescinded if the petitioner misled the respondent in deciding to consent to the decree (5);
- (3) A decree must not normally be made absolute unless the court has satisfied itself about the arrangements made for any children of the family(6);
- (4) Where the petition is based on one of the 'living apart' facts and the respondent successfully opposes the dissolution of the marriage (7).

These provisions were designed primarily to protect the innocent wife (i.e. one who could not have been divorced against her will under the old divorce law). Accordingly, they apply only to petitions founded

1) Cretney, op. cit. p. 134
2) Matrimonial Causes Act 1973 s. 1 (2)(d)
3) ibid. s. 1 (2)(e)
4) ibid. s. 1 (4)
5) ibid. s. 10 (1)
6) ibid. s. 41
7) ibid. s. 5 and s. 10

solely on the living apart facts.

The pre-1969 divorce law was often criticised because, far from encouraging reconciliation between estranged couples, it made it less likely. The risk that an attempt might constitute the bar of condonation led lawyers to advise their clients to have no dealings with the other spouse⁽¹⁾. The Divorce Reform Act of 1969 introduced for the first time the notion of reconciliation as an important prerequisite feature of matrimonial litigation⁽²⁾. In principle, there are the following three provisions in this respect :

(i) Discussion with a solicitor. When a solicitor is acting for a petitioner, he must file a certificate as to whether he has discussed with the petitioner the possibility of a reconciliation and given him the names and addresses of persons qualified to help in this regard⁽³⁾.

(ii) Adjournment of proceedings. If at any stage of proceedings for divorce it appears to the court that there is a reasonable possibility of a reconciliation between the parties, the court may adjourn the proceedings for such period as it thinks fit to enable attempts at reconciliation to be made⁽⁴⁾.

1) Cretney, op. cit. 153

2) ibid. p. 153

3) M.C.A. 1973 s. 6 (1)

4) ibid. s. 6 (2)

(iii) Conditional resumption of cohabitation. The present law contains provisions designed to enable the parties to resume cohabitation for a period or periods up to six months without prejudicing their right to divorce⁽¹⁾. If the parties have lived together for more than six months after the petitioner discovered that the respondent had committed adultery, then the petitioner cannot rely on that fact of adultery⁽²⁾. A similar rule applies if the petitioner relies on the respondent's behaviour⁽³⁾. However in the cases of desertion and separation the court disregards any period or periods of cohabitation not exceeding six months in which the parties have lived together in the same household⁽⁴⁾.

This very briefly is the historical development of the present civil legislation of divorce in England and its main aspects. To this development of the State's law, there is no doubt that, the Church of England made an important contribution through the publication of its Report Putting Asunder in 1966⁽⁵⁾.

1) M.C.A. 1973 s. 2 (1)-(3), (5)

2) ibid. s. 2 (1), (2), (6)

3) ibid. s. 2 (3), (6)

4) ibid. s. 2 (5), (6). In these cases, the periods of cohabitation are ignored by the court in calculating the length of time the parties have been apart. Hence, if the husband leaves his wife, they then live together for four months, and he then leaves her again, she will not be able to petition for divorce alleging desertion or separation until two years and four months have elapsed from his first leaving her. This is the only exception to the rule that two or more periods of desertion or separation cannot be added together to give a period of two or five years in the aggregate; Bromley, op. cit. p. 253 and Cretney, op. cit. pp. 155, 103 and 134.

5) Bromley, op. cit. p. 240; Cretney, op. cit. pp 85-86

That Report, although expressly was to consider the law necessary in secular society and not the matrimonial doctrine and discipline of the Church of England, in a way it was expressing one of the two main theological traditions which have persisted in the Church of England since the Reformation⁽¹⁾. It was the view which finds remarriage after divorce theologically permissible on the ground of the Matthean exception, and in some cases on the ground of desertion as well⁽²⁾. The other view, which has always been pronounced and observed as the official attitude of the Church of England, denies the theological possibility of a divorce a vinculo matrimonii and so denies also the possibility of remarriage in Church of those divorced⁽³⁾. This official practice and discipline of the Church seems to had come to be regarded by many as unsatisfactory, and in a long debate on Divorce Law Reform the Church Assembly of 1967 welcomed the Report Putting Asunder and considered that :

" the fact that a marriage appears finally to have broken down should be the sole grounds of civil divorce"⁽⁴⁾.

1) Dr. A.R. Winnett in his books Divorce and Remarriage in Anglicanism (MacMillan, 1958) and The Church and Divorce: A Factual Survey (Mowbray, 1968) traced these two main theological traditions (the indissolubilist and the non-indissolubilist) which have persisted in the Church of England since the Reformation to the eve of the 1968 Lambeth Conference. A very informative summary of this survey is given by Canon Herbert Waddams in Appendix 7 of Marriage, Divorce and the Church, op.cit. pp. 152ff

2) ibid. pp. 79ff, Hugh Montefiore, op. cit. pp. 114ff

3) Canon Waddams, op. cit. p. 152ff

4) Church Assembly, Report of Proceedings (Febr.1967) vol. xlvii, no 2 pp.230ff,253 cited in Atkinson, op.cit. p.14

This seems to have marked a turning point in the attitude of the Church, which was expressed in a Resolution, passed by the Convocation of Canterbury in 1967 to appoint a Commission "to prepare a statement on the Christian doctrine of marriage"⁽¹⁾. The Commission which was appointed by the Archbishop of Canterbury in 1968 was chaired by Canon Howard Root and was to prepare its Report against the background of the debate in the Convocation of Canterbury :

" as to whether there might be occasion for relaxing the present rule of the Convocation, whereby a divorced person with a former partner living, may not have on remarrying a marriage service in Church"⁽²⁾.

In view of the appointment of the Root Commission and of the general debate on the subject it seems that the 1968 Lambeth Conference was reserved in committing on the matter any of its Resolutions⁽³⁾.

The Commission considered past and present attitudes of the Church to marriage and tried to approach the problem in terms of personal relationships rather than of theoretical assumptions. Its findings and recommendations were a direct challenge to the official discipline of the Church⁽⁴⁾ and underlined the growing tension between the Church's pastoral and

1) Church Assembly, Report of Proceedings (1967) vol. xlvii o 2 p. 253

2) ibid. pp. 253ff; Marriage, Divorce and the Church op. cit. p. xi

3) The Lambeth Conference 1968 Resolutions and Reports, S.P.C.K. 1968 pp. 36-37

4) Marriage and the Church's Task, op. cit. p. 6

prophetic roles⁽¹⁾. Basically the recommendations were summed up in a proposal for a moral consensus to be taken in the country among Christian people, both clerical and lay, as to whether :

- " 1. some marriages, however well intended, do break down ?
2. some divorced partners enter into new unions in good faith, and that some of these new unions show such evident features of stability, complementarity, fruitfulness and growth as to make them comparable with satisfactory first marriages ? and
3. that Christian congregations are not scandalised, in the theological sense of the word, by the presence of such persons in their midst, or by their participation in the Holy Communion ?"(2)

If such a consensus were found to exist in favour of remarriage in Church, "then it would be the duty of the Bishops-in-Synod to determine whether this consensus is theologically well founded"⁽³⁾. The unanimous conviction of the Commission was that "this was the case"⁽⁴⁾. "Such a moral judgement would not be inconsistent with the witness and teaching of the New Testament as a whole, nor with the tradition of the Orthodox and Protestant Churches; nor would it be inconsistent with the Western Church, if account be taken of the wide gulf between the developed theory of indissolubility and the divergent practice based on the use of nullity decrees"⁽⁵⁾. The view of the Commission was that provision should be made for a penitential procedure to be held before any second

1) Atkinson, op. cit. p. 30
2) Root Report, op. cit., p. 71
3) ibid. para. 142 p. 72
4) ibid. para. 142 p. 72
5) ibid. para. 142 p. 72

marriage service were given, and suggested examples of possible forms⁽¹⁾. It was considered that the responsibility for the decision in each case should rest with the parish priest concerned, but reference would also be made to the Bishop,

" who might well want to associate suitably qualified clerical and lay advisers with his decisions. Such procedure, while respecting the statutory right of an incumbent to remarry a couple in Church, if he so decides, would rely on the same courtesy, good will and respect for spiritual authority, which is already deployed in the Church's matrimonial affairs" (2)

Many people welcomed the Root Report, but it seems that the traditional rigid view prevailed in the General Synod where a substantial body of members were unsympathetic to the Report from its first appearance there⁽³⁾. Between February 1972 and November 1974 the Report was debated on three separate occasions before its recommendations were finally rejected⁽⁴⁾.

In November 1974 the General Synod carried a motion calling for a fresh examination and about a year later (October 1975) a new Marriage Commission⁽⁵⁾ was set up by the Archbishops of Canterbury and York with the following terms of reference :

1) Root Report, op. cit. paras 144-147 pp. 73-75

2) ibid. para. 144 p. 74

3) For a full report of the debates see the Reports of Proceedings of the General Synod (1972) vol. 3 No 1 pp. 75-116; (1973) vol. 4 pp. 727-780; (1974) vol. 5 pp. 808-837

4) ibid. vol. 5 (1974) pp. 808ff

5) Chaired by the Right Rev. Kenneth Skelton, Bishop of Lichfield

- "(1) To examine afresh the Christian doctrine of marriage and the marriage discipline of the Church of England, especially in the light of recent debates in the General Synod and elsewhere.
- (2) To consider the understanding by contemporary people of the place of marriage as an institution.
- (3) To report on the courses of action open to the Church in seeking to promote in contemporary society the Christian ideal of marriage as a life-long union between husband and wife"(1).

The Report of this Commission was published in 1978⁽²⁾ and it was the second official document of the Church of England during the last decade, after the Root Report.

The new Commission was concerned about marriage and how the Church responds to it. Since it is a universal institution which has its origin in nature⁽³⁾ and society the Commission considered more appropriate to speak not of a particular kind of marriage upon which the label Christian could be placed, but just marriage, which is defined as :

" a loving relationship based on mutual attraction and shared values;

a sexual relationship based on physical attraction and shared physical satisfaction;

a biological relationship leading to the birth and nurture of children;

a social relationship involving the family of marriage in a network of wider family and community contacts;

an economic relationship based on a common domicile, the marital home, and a sharing of possessions and income.

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- 1) Marriage and the Church's Task, op. cit. p. v
 - 2) Marriage and the Church's Task, The Report of the General Synod Marriage Commission, CIO, London, 1978
 - 3) Report of Proceedings, General Synod, July Group of Sessions 1978, vol. nine No 2 p. 766

All this is formalised in a legal and institutional relationship involving public recognition and mutual contractual responsibilities.

This complex web of relationships is expected to be exclusive and to last throughout the joint lives of the partners"(1).

After a brief survey of the last ten years' debate on the subject⁽²⁾ and an examination of the massive changes over recent times of the social and economic context of marriage and its changing patterns⁽³⁾, the Commission made an evaluation of the major features of the present English law of marriage and divorce⁽⁴⁾, and then went on to examine afresh the Christian doctrine of marriage⁽⁵⁾, its developing tradition and the marriage discipline of the Church of England⁽⁶⁾. All the members of the Commission agreed that indissolubility is characteristic of marriage, and when a marriage does break down then, there is something radically wrong. Marriage ought to be indissoluble⁽⁷⁾. However the majority of the Commission rejected the doctrine that marriages cannot by definition be dissolved. It is only too possible for human failure and sin to break the bond which God, in principle and in general, wills to be unbreakable, and to put asunder what God, in His original purpose has joined together⁽⁸⁾.

1) Marriage and the Church's Task, op. cit. para.40 pp.16ff

2) ibid. paras. 1-17 pp. 1-9

3) ibid. paras. 18-54 pp. 10-22

4) ibid. paras 55-78 pp. 22-30

5) ibid. paras. 79-140 pp. 31-50

6) ibid. paras. 141-173 pp. 51-61

7) ibid. para. 100 p. 38

8) ibid. para. 100 p. 38

In an Appendix on Marriage and Divorce Statistics the Commission gave the following rate of divorces⁽¹⁾ during the period 1961 to 1975 :

<u>Year</u>	<u>Total number of divorces</u>
1961	25.400
1966	39.100
1970	58.200
1971	74.400
1972	119.000
1973	106.000
1974	113.500
1975	120.500

The task of the Church is to help as many as possible to discover the roles of married love, and accordingly the Commission set out the two courses of action open to the Church of England :

- (a) to maintain the present official position that divorced persons should in no circumstances be married in Church, or
- (b) to adopt a system whereby without conceding a general right of remarriage in Church, divorced persons were in certain cases permitted to be remarried in Church, following a pastoral enquiry (2).

Finally, the Commission concluded with the following summary of recommendations :

1. that the Convocation regulations requiring that those who marry after divorce should only be admitted to Communion with the permission of the Bishop, should be rescinded.
2. that the present use of service of prayer and dedication in connection with remarriage after divorce should be brought to an end.

1) Marriage and the Church's Task, op. cit. p. 112
Following the introduction of legal aid the figures rose from 29.069 in 1950 to 37.637 in 1951, then followed a decline 33.770 in 1952; 29.845 in 1953; 28.347 in 1954. After a further decline to nearly 22.000 in 1958 the figures have risen steadily since 1960 with 136.086 divorces in 1977; see Royal Commission Report on Marriage and Divorce 1951-1955 p. 357 and Cretney, op. cit. p.97

2) Marriage and the Church's Task, op. cit. para.233 p. 84

3. By majority, they recommended that :
- (a) The Church of England should now take steps to revise its regulations to permit a divorced person with the permission of the Bishop to be married in Church during the lifetime of a former spouse.
 - (b) The marriage of divorced persons in Church should be solemnised by the use of one or other of the existing permitted orders for the solemnisation of marriage, with the addition of an appropriate invariable Preface.
 - (c) The working of the new procedure should be reviewed after a specified period of years.
4. that legislation be introduced to remove the present obligation on the clergy to marry unbaptised people, and that the solemnisation of such marriages should be at the discretion of the minister subject to the advice of the Bishop.
5. By majority, they recommended legislation which will give the diocesan Bishop discretion whether or not to ordain a man who :
- (a) having been divorced has remarried during the lifetime of his former wife; or
 - (b) has married a divorced woman during the lifetime of her former husband.
6. They recommended legislation which will give the Diocesan Bishop discretion whether or not to institute a clergyman who :
- (a) having been divorced has remarried during the lifetime of his former wife; or
 - (b) has married a divorced woman during the lifetime of her former husband.

The Commission's Report and its recommendations were submitted to the General Synod for approval, and at the opening of the July 1978 session the Standing Committee made a provision in the Agenda that "if the Motion reflecting the majority view of the Lichfield Commission fell, there would be a subsequent opportunity for the Synod to vote on the minority view"⁽¹⁾.

1) Report of Proceedings, op. cit. 1978 No 2 p. 390

During the ensuing debate on July 12th 1978 the tension between the two opposing views became evident and at the end the traditional line to retain the status quo was again upheld and the Lichfield Report had the same fate as the Root Report in 1974⁽¹⁾.

Following this result the Standing Committee felt that there was no point in putting to the vote its provision for the minority view. Instead, the Standing Committee, included in the Agenda for the November 1978 session of the Synod the following Motion :

" That this Synod

- (i) commends to the consideration of the dioceses the Lichfield Report as a whole and the debates and decisions to date of the General Synod with regard to it, including in particular what is said in the Report as to the preparation of those about to be married and the pastoral care of those who are married;
- (ii) would welcome any comments from the dioceses on the Report by 30th April 1980; and
- (iii) is of the opinion that in the meantime it would be inappropriate to make any change in the regulations regarding marriage in Church after divorce"(2).

This action by the Standing Committee was also in accordance with the views of several speakers, who during the July debates had urged the desirability of a reference of the issue to the dioceses, especially in view of the fact that the Synod declined to make an official reference where the Root Report was concerned, and since there was evidence from the

1) The Motion was defeated by a majority of seven, the overall voting being 206 in favour and 213 against. Report of Proceedings, op. cit. 1978 No 2 p. 825

2) ibid. No 3 p. 968

dioceses themselves that, not having been consulted on the basis of the Root Report, it was about time that they were brought into the discussion process⁽¹⁾.

On 7 November 1978 the Motion was put and carried with an amendment, of an additional clause, referring to the admission to Holy Communion of those who are divorced and remarried⁽²⁾.

The tension between the two main theological traditions within the Church of England seems to continue for some time yet. The question is, how the Church of England is to fulfil her prophetic and pastoral roles at a time of rapid and massive social upheaval and changes? It will be much easier to answer this question if the consensus of the dioceses by the 30 April 1980 will be as predicted by the Root Report in 1971.

In view of the continuing tension between the opposing views on the question of divorce and remarriage in the Church of England and in the search for a possible course of action, perhaps the practice and discipline of the Greek Orthodox Church on marriage and divorce, to which reference has been made several times by most of the Commissions which have dealt with the problem,⁽³⁾ will be expound in the next part of this dissertation, in the hope that it might provide some new insights towards a contemporary and responsible solution.

1) Report of Proceedings, ibid. No 3 p. 969

2) ibid. p. 988 3) Especially we refer to the very informative and comprehensive exposition of the Eastern Orthodox Tradition on the Sacrament of Marriage by A.M. Allchin in Appendix 3 of the Root Report pp.113ff

PART II

1. The Law of Marriage and Divorce in the Greek Orthodox Church in 1850

At the time under consideration the law assigned to regulate all matters relating to marriage and divorce in the newly liberated State of Greece⁽¹⁾ is clearly stated in a Royal decree of 1835 which

1) cf. Greece as a Kingdom, by Frederick Strong, London, 1842, pp. 350-352. After the fall of the Byzantine Empire (1453) and a bondage of nearly four hundred years, the struggle for freedom began on 25 March 1821. Eight years of war elapsed before Greece was accepted by the great powers in 1829 as an independent nation. In 1832 Greece was established as an independent Kingdom. Louis I of Bavaria accepted the throne on behalf of his 17 years old son Otto, who arrived in Greece in 1833, accompanied by three Bavarian advisers who formed the Council of Regency during his minority. One of these advisers was George Ludwig von Maurer, who was entrusted to handle all ecclesiastical matters which concerned the newly founded Greek State. On his suggestion and without any previous consultation with the Ecumenical Patriarchate of Constantinople, the Mother Church of Greece, King Otto declared on 23 July 1833 the independence of the Greek Church and its establishment as an autocephalous Church. The news were received in Greece, at first, with great joy. But soon it was realised that the Church became completely subservient to the State, when on 23 February 1835 the first Constitution of 1833 of the Independent Greek Church was reaffirmed, and it was pronounced that the highest ecclesiastical authority of the Greek Church was to be a Synod of five Bishops under the supremacy of the King, who was to appoint them. The same decree stated that no decision was to be taken without the presence and approval of the Royal Commissioner, whose signature on the minutes was necessary if any decision of the Synod was not to be null and void. The first attempt by the Greek Church to free herself was made in 1843 and it was repeated in 1845, but both efforts failed without any change being effected for many years. The following facts may help to explain why Maurer tried to introduce such a decisively Erastian system of ecclesiastical policy: a) Maurer was a Protestant and King Otto a Roman Catholic; b) Bavaria, from where both

declared that :

" The civil laws of the Byzantine Emperors which are included in Armenopoulos' Hexabiblos will be in force until the Civil Code, being under construction, is published" (1).

As far as the law of marriage and divorce is concerned, armenopoulos' Hexabiblos⁽²⁾ contained a compilation of the novels and the civil legislation

came, was predominantly a Roman Catholic country with a very small Protestant minority; c) the Pope at the time was still considered as ~~the Emperor of the Holy Roman Empire~~, and as the State interests of each country led them to distrust each other, it was natural that the Pope and his ~~Empire~~ were looked upon with great suspicion by the other States, including Bavaria ; d) the official title of the Greek Orthodox Church in German was Greek Catholic Church (Griechische Katholische Kirche) in contrast to the title of the church of Rome, which was Roman Catholic Church (Romische Katholische Kirche). These names misled many people to think that both titles applied to one and the same Catholic Church, there Roman and here Greek ; e) as far as the Church was concerned , the Pope as head of the Roman Catholic Church had under his influence a great part of Bavaria, therefore, it was obvious that the statesmen of Bavaria and mainly those who were non-catholics were anti-clerical. Their tendency was to try to control even the internal affairs of the church, lest she interfered in state affairs. There is no doubt that these factors had greatly influenced Maurer to introduce in Greece a strong Erastian ecclesiastical system, which would keep the Orthodox church under the strict control and supervision of the State. cf the late Professor H. Alivisatos' article on the condition of the Greek Church in 1850, printed in the monthly ecclesiastical review Orthodox Thought (in Greek) Athens, 1958, No 7-8 pp. 105-107 ; see also D. Papoulias, General Principles of Civil Law, Athens, 1921 pp. 3-7 (in Greek).

1) Royal Decree, 23 February 1835, article 1 cf J. Zhishman, The Law of Marriage in the Eastern Orthodox Church, Athens, 1912-1913 (in Greek) vol. 1 p. 704; A. Gazi, General Principles of the Civil Code, (in Greek) Athens, 1970 p. 10

2) Constantine Armenopoulos (1320-1380) was a fourteenth century famous canonist of the Greek Orthodox Church. He held a high office in the administration of Thessaloniki, the second largest city of the Byzantine Empire. In 1345

supreme authority
Europe

of Byzantium of macedonian Emperor Basil I (867-886) and his successors and of Synodical decisions of the Church of Constantinople until Armenopoulos' time⁽¹⁾.

Armenopoulos' Hexabiblos deals with matters of marriage and divorce in the fourth Book, which bears the heading "About Espousals and Marriages"⁽²⁾ and is divided into the following chapter headings :

1. About consent in the espousals (p.218)
2. About Betrothal in Espousals (p.222)
3. About donations (gifts) in Espousals (p.224)
4. About the definition and the conditions of marriage (p.226)
5. About the precision concerning marriage (p.230)
6. About pre-marriage donation (gift) (p.230)
7. About prohibited marriages (p.231)
8. About consummation of marriages and degrees of consanguinity (p.238)
9. About those entering second marriage (p.241)
10. About the law of dowry (p.250)
11. About the rights and obligations regarding dowry (p.262)
12. About non-dowry assets (p.266)
13. About the deposit of dowry (p.266)
14. About presents between husband and wife (p.268)
15. About dissolution of marriage and its causes (p.270)

he compiled his Procheiron (a Handy Law-book), which was a collection from the Novels and the civil legislation of the Macedonian Emperors from Basil I to his time. It was called Hexabiblos because it was divided into six parts or books. This Collection after the fall of the Byzantine Empire in 1453 and for the whole time of the conquest, was highly respected as a legal guide and was treated as a rule in the practice of the Church, which was held responsible and liable by the Conqueror for the discipline of her members. The Hexabiblos was in use even before it received official legal sanction. In the first year of the revolution (1821) there was a pronouncement that for all civil matters the Law-book of Armenopoulos would be in force (Introduction to the latest edition of Armenopoulos' Hexabiblos by Constantine Pitsakis (in Greek), Athens, 1971 p. 110 note 88); also on 15 August 1830 a decree about the organisation of the tribunals ordered its use in the Courts, until on 23 february 1835 it was made law by Royal decree; cf Zhishman, op. cit. vol. I p. 704.

The definition of marriage given by Armenopoulos coincides word by word with the definition proposed by the jurist Herenius Modestinus (228)⁽³⁾. This affinity of conception as to the essence of marriage clearly indicates that the Church, right from the beginning and without any difficulty or objection, accepted the Roman state-order regarding marriage⁽⁴⁾. The same took place at the time under consideration. The content of that definition was fully satisfactory to the Church and its chief points as interpreted by various scholars were meeting exactly the conception of the Church about marriage⁽⁵⁾. This conception, according to the late Professor Alivisatos, included the following points :

- (1) That the defined fact of the corporeal union of a man and a woman and of their mutual physical association, creating quite naturally certain innerly feelings and obligations, is based on natural law as given by God.

1) Zhishman, op. cit. vol. I pp. 108, 129-131

2) Handy Law-book or Hexabiblos of Constantine Armenopoulos (in Greek), edited by Constantine Pitsakis, Athens, 1971 pp. 218 - 272

3) see p. 25 for Modestinus' definition; Hexabiblos, op. cit. p. 226 "Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγκλήρωσις πάσης ζωῆς, θεοῦ τε καὶ ἀνθρωπίνου δικαίου κοινωνία ". Δ, I

4) Hamilcar S. Alivisatos, Marriage and Divorce, in accordance with the Canon Law of the Orthodox Church, London, Faith Press, 1948 p. 6

5) ibid. p. 6

- (2) That the moral meaning of the underlined monogamy and of the duration of union for the whole life, refer not only to the common corporeal satisfaction, but also to the mutual communion of all goods in life, and give to the marriage an entirely acceptable sense for the Christian Church, of a high moral and social value.
- (3) That the marriage takes a full religious and social character, since the achieved life union through marriage is to be regulated by divine and human law" (1).

These observations point out that marriage is the object of interest for both Church and State, for Canon Law and Civil Law. The Civil legislation of 1835 sanctioned this sacramental character, in that marriage in Greece was to be without any subsistence (ἀνυπόστατος) if it was not ratified by the Church's liturgical rite⁽²⁾.

Armenopoulos was quite explicit on this point when he stated that "mutual consent, as the only constituting factor of a marriage belongs to the old law. According to the new law introduced by Emperor Leo VI (886-912) and Emperor Alexios Komnenos(1048-1118) without the liturgical ritual and the blessing of the Church even if there is mutual consent marriage is not contracted"⁽³⁾.

1) Alivisatos, op. cit. p. 6

2) For Orthodox theologians and canonists marriage is considered as one of the seven sacraments. But the number seven does not constitute an official doctrine of the Orthodox Church, formulated, exposed and finally accepted by an Ecumenical Council as is the case with the Roman Catholic Church, through Tridentium. The fixed number seven of the sacraments, although inserted in all modern orthodox catechisms, is a teaching of later Greek theology, later than the eighth and ninth centuries. Fathers and teachers of the authority of St. John Damascene speak about two sacraments, and some about three, five or even more than seven. It is probable that the number seven was accepted by Orthodox Theology later, possibly through some Roman Catholic influence. Ibid. p. 7

3) Armenopoulos' Hexabiblos, op. cit. p. 228

It is difficult to follow the historical development of the Church's practice during the period of the conquest. However there is evidence that in the first half of the nineteenth century the enforced law did not become subject to many changes. Changes were introduced mainly in the area of prohibited degrees⁽¹⁾. On 10 February 1839, a Tome concerning marriage was published by Patriarch Gregorios of Constantinople with the approval of the Holy Synod, which declared that the canonical constitutions about marriage being in force till then will remain unchanged and no concession will be allowed in the future before or after a marriage⁽²⁾. The regulations regarding the prohibited degrees were stated as follows :

1. marriage is forbidden between persons who are related to the eighth degree of consanguinity;⁽³⁾

1) P.Panayotakos, Civil Code and the Church on Marriage, (in Greek) Athens, 1940 pp. 24ff; M. Gedeon, Patriarchal and Synodical Institutions, (in Greek) Constantinople, 1888-1889, vol. II, pp. 74ff In a Synodical letter of Patriarch Callinicos, dated 16 May 1808 permission is given for a marriage to take place in the seventh degree of consanguinity (Gedeon, ibid. pp. 91-94); on 9 June 1814 Patriarch Cyril VI confirmed on the basis of ecclesiastical economy and tolerance the marriage of a grand father and a grand son with an aunt and a niece i.e. in the fifth degree of affinity (ibid. pp. 149-151; for the notion of Economy in the Greek Orthodox Church see Appendix I pp. 283ff); permission was also given on 11 December 1816 by Patriarch Cyril VI for the marriage of two brothers with an aunt and a niece i.e. in the fifth degree of affinity (Zhishman, op. cit. vol. I p. 78); nine years later, on 23 February 1825 Patriarch Chryssanthos forbade the marriage in the fifth degree of affinity (ibid. p. 79) on 6 April 1832 a Patriarchal letter of Constantine I, granted permission for a marriage in the sixth degree of consanguinity (ibid. p. 78).

2) Syntagma of Sacred Canons, Ralli & Potli (in Greek), Athens, 1852-1859 vol. I - VI, vol. V p. 164-176

3) With regard to the computation of the degrees of relationship see pp. 176 ff

2. to the sixth degree of affinity;
3. to the fourth degree in the affinity of three families, and
4. the spiritual relationship from baptism was put to the same level with consanguinity and it was made an impediment up to the eighth degree (1).

With regard to the other requirements and formalities for a valid marriage a point which was carefully observed at that time was the Bishop's licence. On March 23 1827, Patriarch Agathangelos declared a marriage null, because it was contracted without the Bishop's licence⁽²⁾.

As regards the proper age for marriage in Justinian's law it was the fourteenth year for a man and the twelfth year for a woman⁽³⁾. It seems that this rule was observed since then with the consent and approval of the Church⁽⁴⁾. However, in 1849 an Encyclical of the Synod of the Greek Church was circulated forbidding the marriage for a man under the age of eighteen and for a woman under the age of fourteen⁽⁵⁾.

1) Ralli & Potli, Syntagma, op. cit. vol. V p. 164; Zhishman, op. cit. vol. I p. 70

2) ibid. p. 83. In 1834 a Synodical decision declared a marriage null, because it was contracted secretly and without the Bishop's licence (ibid. p. 83); similar declarations are found also in 1836 (ibid. pp.83-85) and in 1841 (ibid. pp. 375ff)

3) Zhishman ibid. pp. 369ff see also p. 40

4) Ralli & Potli, Syntagma, op. cit. vol. V p. 35 ; Zhishman, op. cit. vol. I p. 371

5) Collection of Synodical decisions of the Greek Church (in Greek) by Giannakopoulos St. Athens, 1901 p. 461

On 29 June 1850 the Ecumenical Patriarchate of Constantinople recognised the Church of Greece as Autocephalous, and on this occasion published a Synodical Tome regarding the status of the new Church⁽¹⁾. The 1850 Tome stated that all matters concerning marriage and divorce should be under the jurisdiction of the Church and that she had to regulate about them⁽²⁾. It was evident that the Church of Constantinople tried to set free and protect the newly formed Church of Greece from the ecclesiastical system imposed upon her and to leave the institution of marriage wholly under the jurisdiction of the Church, but it was to no avail.

1) Constitutional Legislation of the Greek Church since the establishment of the Greek Kingdom, (in Greek) by the Metropolitan of Kitros Barnabas Tzortzatos, Athens, 1967 pp. 18-27. This Tome stated that there should be a permanent Synod, as the highest ecclesiastical authority which should administer all Church affairs according to the Canon Law and without any secular interference. The matter was again ignored by the State authorities and the relations between Church and State in Greece remained the same as when they were first organised by Maurer in 1833. The Church was completely subordinated to the State with no freedom of action. The Synod was closely supervised and controlled, and no decision of her had had any effect apart from State confirmation. If the Royal Commissioner did not attend a meeting either for illness or to boycott any business, the Synod had to postpone its sitting which meant that even purely spiritual matters were also affected whenever the State wished to do so. Even for the election of a Bishop the Church had to propose three candidates out of whom the temporal authority had the right to choose the successful one; so the dependence of the Church on the State was complete in all her actions, cf H. Alivisatos "On the condition of the Greek Church in 1850" in the monthly ecclesiastical review Orthodox Thought, Athens, (in Greek) 1958 pp. 105-107, and in Holy Canons (in Greek) by the same author, 1949 pp. 490-491

2) Barnabas Tzortzatos, op. cit. pp. 18-27 and in Synodical Tome (in Greek) by Th. Farmakidis, Athens, 1852 p. 528

The 1833 declaration which was reaffirmed in 1835 and stated that the secular side of marriage is under the jurisdiction of the civil authorities and the spiritual side under the ecclesiastical authority, continued to remain in force⁽¹⁾. The Church was given the responsibility

1) A new legislation which was passed in 1852, apart from two amendments on the previous legislation, reaffirmed with more vigour and in detail the position and the rights of the Greek Church. The modifications were a) that the King was not mentioned any more as head of the Church and b) that the Metropolitan of Athens was accepted as Archbishop of All Greece and Permanent President of the Holy Synod. But on all other points the new legislation simply followed, reaffirmed and stressed the same lines as the 1833 declaration which had pronounced the Church of Greece as Autocephalus (Alivisatos, Holy Canons, op. cit. p. 490). The position and the rights of the Church as regards marriage were clearly stated in the following two articles of the new legislation :

"Article 16. If the Church finds that a marriage was contracted illegally, she has the right to demand from the State to take the necessary steps according to the Civil Code; in case of nullity, after the pronouncement by the civil courts, she also pronounces the marriage to be spiritually null.

"Article 17. Whosoever demands a divorce should first refer to the local Bishop who invites both the disputed parties and uses every means to reconcile them. If his efforts fail to succeed after three months, he refers the matter to the local civil court, which, only with the said reference of the Bishop accepts the suit for a divorce and proceeds then with the hearing of the case in accordance with the requirements of the Civil Code. During the time of the attempts for reconciliation the Bishop may give to the woman a written permission to live in another suitable place, if this is necessary.

After the issue of the court's irrevocable decision for the dissolution of the marriage, the Attorney General sends a copy of it to the local ecclesiastical authorities in order that they will also pronounce the marriage spiritually dissolved"(Alivisatos, ibid. p. 501)

of blessing the marriage, while the State reserved the right to deal and decide in cases of unsuccessful unions i.e. on divorce. The State recognised the marriage which was blessed by the Church and therefore in case of a divorce the decision of the civil court was referred to the Church so that she would as well undo what she had joined at the marriage. Although the wording of the articles and of the law give the impression that, after failure to reconcile the disputed parties, the Bishop's reference was necessary for a divorce case to proceed in the civil courts⁽¹⁾, in practice this was not so for, at the expiration at the expiration of the three months period for reconciliation, even without the Bishop's reference, the court could proceed with the hearing of the case at the request of the interested party⁽²⁾.

This very briefly is a picture of the situation regarding the law of marriage and divorce in Greece in 1850. The law introduced i.e. the Hexabiblos of Armenopoulos, was based on the Basilika of the Macedonian Byzantine Emperors⁽³⁾ and on the legislation of Justinian and his successors⁽⁴⁾. So the State recognised

1) The Divorce by George Maridakis (in Greek), Athens, 1938, p. 151

2) ibid. p. 151

3) Armenopoulos' Hexabiblos, op. cit. p. 33

4) P. Panayotakos, op. cit. pp. 24ff

the sacramental aspect of marriage which was adopted in the Armenopoulos' Hexabiblos and made the religious rite an essential element for the validity of a marriage. Accordingly the State authorised the Church to handle the contracting of marriages and to be responsible for the preliminary conditions and formalities and for the absence of any impediment that would invalidate such a contract⁽¹⁾. On the other hand the Greek Orthodox Church satisfied with this way of arrangement, and having no other option has left it to the State to adjudicate all the judicial matters relating to the dissolution of marriage.

1) P. Panayotakos, Treatise on the Impediments to Marriage, (in Greek) Athens, 1959, p. 142

After the Royal decree of 1835 which introduced the Byzantine legislation Armenopoulos's Hexabiblos was hastily reprinted in Athens in 1835 (its first edition was published in Paris in 1540) and remained officially in force until 15 March 1940, when the new Civil Code was published. However this Code was not enforced before 23 February 1946, because of the second World War and the Greek civil war which followed, as a matter of consequence cf. Constantine Pitsakis in his introduction to the latest edition of the Hexabiblos, op. cit. p. 105

2. Conditions and Impediments to Marriage according to the Canon Law of the Greek Orthodox Church and the Civil law of Greece since 1850

In the newly established Kingdom of Greece (1832) the legislation concerning marriage recognised that the Church, in the person of the Bishop, had the right to verify if the necessary conditions and requirements for contracting a valid marriage were satisfactory⁽¹⁾. Such authority of the Bishop was naturally delegated by him to each local parish priest, who was responsible to see that these conditions were observed and that there were no impediment forbidding or obstructing the contracting of any marriage⁽²⁾.

According to Armenopoulos' Hexabiblos⁽³⁾ the Byzantine law knew only the unions contracted according to the divine and human laws (γάμος ἔννομος)⁽⁴⁾ and the prohibited unions (κεκωλυμένοι γάμοι)⁽⁵⁾. The term 'κόλυμα' in the sense of an impediment to marriage appeared for the first time in the Synodical Retract of Patriarch John VIII Xyphilinos (1066-1067)⁽⁶⁾.

1) Article 16, para. 2 Constitutional Law of the Greek Church, 1852 in Alivisatos, Holy Canons, op. cit. p. 501; Hexabiblos, op. cit. p. 228

2) Athenagoras Kokkinakis, Parents and Priests as Servants of Redemption, New York, 1958 p. 46

3) Hexabiblos, op.cit. pp. 218-276

4) ibid. p. 226

5) ibid. pp. 231-238 He also distinguished the prohibited unions into ἑννεστος i.e. incestuous union between blood relations; δαμνάτος i.e. a union between a guardian and the ward of court or between a free person and a slave; and νεφάρτος i.e. an illegal union with a person in holy orders or vows of chastity or after forced rape; ibid. p.241

6) Panayotakos, op.cit. p.19; Ralli & Potli, op.cit. v.Vpp.52-54

The fourteenth century canonist Mattheos Vlastaris⁽¹⁾

divides the impediments into three groups :

- (a) those which make the marriage illegitimate (such as between guardian and the person under guardianship),
- (b) those which are known as blamable (with a person in holy Orders or vows of chastity),
- (c) those which are illicit (between blood relatives to a certain degree or with a heretic) (2).

Another division places the impediments into two groups :

- (a) those which come from family ties, and
- (b) all the others⁽³⁾.

The late Professor Hamilcar Alivisatos, followed by many modern canonists and jurists divided the impediments into two sections⁽⁴⁾ :

- i) the absolute impediments ἀνατρεπτικά
ἢ ἀπόλυτα κωλύματα and
- ii) the relative ones, ἀναβλητικά ἢ
σχετικά κωλύματα

Those of the first group are forbidding marriage with any person, whereas the others forbid marriage with certain persons only⁽⁵⁾.

The 1940 Civil Code of Greece ignores these distinctions and deals with each impediment separately⁽⁶⁾.

1) He lived at the beginning of the fourteenth century. In 1335 he compiled his work on The Divine and Holy Canons which established him as a great canonist; Ralli & Potli, op. cit. vol. II, 432 and vol. IV 162

2) Commentary on the 9th canon of St. Basil in P.G.144,1166

3) Zhishman, op. cit. vol. I pp. 394-395

4) ibid. pp. 395ff; Evangelos Mantzouneas, Ecclesiastical Law (in Greek) Athens, 1979 vol. I pp. 135-139; Harry Vassilaki, Synopsis of Family Law, Athens, 1975 (in Greek) pp. 18-22; Cyrille Vogel, "La législation actuelle sur les Fiancailles, le Mariage et le Divorce dans le Royaume de Grece", Istina, No 2, 1961-1962 pp. 166-173

5) Alivisatos, Marriage and Divorce, op. cit. pp. 9-10

6) Alivisatos, Holy Canons, op.cit. which also includes the Family Law part of the 1940 Civil Code, pp. 722-731

In the present chapter, conditions and impediments to marriage according to the Law of the Greek Orthodox Church and the Civil Law of Greece since 1850 will be dealt with under the following headings :

- a) Conditions of contracting a valid marriage which refer to the personal qualification (capacity) of each party :
 1. Difference of sex
 2. Proper age
 3. Mutual consent
 4. Parental consent
 5. Mental and physical capacity or competence

- b) Impediments which refer to the existing relationship between the two parties :
 1. Consanguinity
 2. Affinity
 3. Spiritual relationship
 4. Relationship through adoption
 5. Relationship through guardianship
 6. Adultery

- c) Impediments which refer to already existing relationship of one or both of the parties with other connections :
 1. Existing marriage
 2. Fourth consecutive marriage
 3. Holy Orders and monastic life
 4. Difference of religion or denomination

- d) Conditional impediments which refer to a temporary delay
 1. Mourning year
 2. Drafting licence
 3. Seasons of prohibition

- e) Conditions which refer to the final and essential formalities of contracting a marriage
 1. Banns
 2. The Bishop's licence
 3. The liturgical rite of the Greek Orthodox Church

a) Conditions which refer to the personal qualification
(capacity) of each party to the marriage

1. Difference of sex. In accordance with the definition by Modestinus, which has been accepted by both the Greek Orthodox Church, since the early times as not contrary to her teaching on marriage⁽¹⁾, and by the Greek State, through the Byzantine legislation in the Armenopoulos' Hexabiblos⁽²⁾, marriage is the "union between a man and a woman"⁽³⁾. Therefore a self-evident condition for contracting a marriage in Greece always was and still is the difference of sexes of the parties entering the union⁽⁴⁾. Hence, marriage between two people of the same sex is inexistent for both past and present ecclesiastical and civil legislation in Greece⁽⁵⁾

2. Proper age. The Byzantine law introduced by the Hexabiblos accepted Justinian's regulations that the proper age for marriage was the fourteenth year for a man and the twelfth year for a woman⁽⁶⁾. It seems that at the time the Church had no option but to accept the State's regulations⁽⁷⁾. However when this legislation

1) Alivisatos, Marriage and Divorce, op. cit. p. 6

2) Hexabiblos, op. cit. Titl. 4,1 pp. 226-227

3) For Modestinus' full definition of marriage see p. 25

4) Article 1350 of the 1940 Civil Code in Alivisatos, Holy Canons, pp. 722-723; cf Mantzouneas, op. cit. p. 134
 Harry Vassilaki, op. cit. p. 18

5) The 1940 Civil Code in all its articles on Family Law refers to marriage as a union between a man and a woman; Alivisatos, ibid. pp. 722-731

6) Hexabiblos, op. cit. pp. 226-7 see also p. 40

7) Nikodeme Milash, The Ecclesiastical Law of the Eastern Orthodox Church, Athens, 1906 (in Greek) p. 832; Zhishman, op. cit. vol. II p. 201; Ralli and Potli, op. cit. vol. II, p. 224 and vol. V p. 35

was introduced in Greece the Church strongly opposed such immature unions and in cases where they had taken place, she demanded⁽¹⁾ their immediate annulment and punished severely with defrocking the priests who knowingly celebrated such marriages⁽²⁾. An Encyclical of the Synod of the Greek Church, circulated in 1849, strictly forbade the marriage for a man under the age of eighteen and for a woman under the age of fourteen⁽³⁾.

1) This was in accordance with article 16 of the 1852 decree, see p. 160

2) Panayotakos, On the Impediments, op. cit. p. 29

3) S. Giannakopoulos, Collection of Synodical Decisions of the Greek Church, Athens, 1901, p. 461 (in Greek)

By the beginning of the tenth century the Emperor Constantine Porphyrogenitos (905-959) demanded that a man should be fifteen years old and a woman fourteen years old in order to contract a legally valid marriage (P.G. 113,493) and to this civil enactment the ecclesiastical law concurred. However, it seems that many parents used to arrange marriage for their children much earlier than at the age required by law. This is evident from the remarks and comments made by various authors at the time, and also from the repeated enactments by civil laws that "the woman who is married under the age of twelve becomes a legal wife only when she completes her twelfth year" (Epanagoge Titl. 14, 18 cited in F. Koukoule, op.cit. p. 77) and by similar pronouncements of the Church, such as a Synodical decision that "the woman who releases her belt of virginity at an immature age, is divorced from the corruptor, and the celebrant who knowingly blessed them is to be defrocked" (P.G. 119, 802 and Ralli-Potli, op. cit. V, 35) To these should also be added the evidence of Joseph Vryenios who lived in the middle of the fifteenth century and attributed the permissiveness and deterioration of his time to the fact that "many parents use to give their immature daughters to child-corruption cited in Koukoules, op. cit. p. 77 see also Panayotakos, On the Impediments, op. cit. pp. 28-29

In 1861 the State passed a law according to which, whoever had completed the twenty first year of age was emancipated and had full legal rights, but there was also a provision that all matters relating to marriage were to be observed in accordance with the regulations of the Byzantine law⁽¹⁾. This meant that no marriage was allowed for anyone under the age of 21 without the parents' or the guardian's consent⁽²⁾. Accordingly this law was observed and practiced until 1940, when it was replaced by the new Civil Code, which on this particular point provides that, to contract a valid marriage a man should be eighteen years old and the woman fourteen years old⁽³⁾; yet before reaching the legal age of emancipation (21 for both sexes) the consent of the parents or of the guardian is required, otherwise if despite this impediment the marriage takes place, any of the parties could take legal steps to have the marriage pronounced null on this ground⁽⁴⁾. If on the other hand the parties continue to live together after reaching the legal age of 21, their marriage is held valid, and lack of proper age as a ground for nullity ceases to be of value⁽⁵⁾. This law has been accepted by the Greek Church as not contrary to her teaching and canons and therefore observes it in her practice until the present time⁽⁶⁾.

1) Zhishman, op. cit. vol. I p. 378

2) ibid. p. 378

3) Article 1350, Alivisatos, Holy Canons, op. cit. p. 722

4) Articles 1352 & 1373 ibid. pp. 723 & 729

5) Article 1373 ibid. p. 729

6) Mantzouneas, op. cit. vol. I p. 134. The condition of

3. Mutual consent. This condition which is an expression of the free will of each party, is an essential element for a valid marriage⁽¹⁾. According to the Byzantine law which was introduced in Greece mutual consent and not intercourse was the essential factor constituting marriage. Therefore absence of true consent due to duress or mistake was considered as a vital impediment⁽²⁾. Since 1850 both civil legislation and ecclesiastical pronouncements in Greece stressed the importance and the need of this basic element, the established absence of which could render the marriage null and void⁽³⁾.

proper age for marriage, which has been observed with variations at different places and times, refers of course only to the lower limit of proper age. Those who were above such a minimum age and wished to contract a marriage could do so freely, as long as there were no other impediments. However, it seems that there were limits for aged people, who were not allowed to marry, if a man was over sixty and a woman over fifty. This requirement of the Roman law (Lex Julia de maritandis of Augustus, cited by Koukoules, op. cit. p. 78) was not strictly observed until eventually it was altogether abolished by Justinian (Codex Justinianus V 4, 27 in Zhishman, op. cit. vol. I p. 379). For the ecclesiastical Fathers and canons marriage was not allowed for a man who were over seventy and for a woman who were over sixty and according to St. Basil those who ignored this rule were debarred from Holy Communion (P.G. 32, 724). It should be noted also that there were instances where there was a considerable difference of age between the couple to a marriage. Such were the cases mostly of poor young girls, who for the sake of rich dowries, consented to marry much older people; cf. Koukoules, ibid. p. 78, Zhishman, ibid. pp. 379-380.

1) The Christian Church since early times in canons and pronouncements of General Councils and of early Fathers condemned those who used force or threats and violence to extort consent for marriage from the other party cf. Canon 11 of the Council of Ancyra(313-314) in Alivisatos Holy Canons, op. cit. pp. 160-161; canon 27 of the General Council of Chalcedon (451) ibid. p. 58; canon 92 of the Council of Troullo(691-692) ibid. p. 192 ; canon

The 1940 Civil Code explicitly requires mutual consent as an indispensable condition of the parties who are to marry, otherwise the marriage is pronounced null⁽⁴⁾. Furthermore the consent has to be given simultaneously and in person without any reservation or qualification⁽⁵⁾ and this is done in front of the priest before whom the parties are required to sign the necessary form of such an intended marriage⁽⁶⁾.

4. Parental consent. Following the Byzantine law, the legislation introduced in Greece in 1853, made parental consent a fundamental condition for contracting a valid marriage⁽¹⁾. Accordingly the Greek Church in assuming the responsibility of arranging and supervising the preliminary conditions and formalities for a marriage

22 of St. Basil the Great, ibid. pp. 367-368.

2) Hexabiblos, op. cit. Titl. IV 3, 19 pp. 227-228

3) Apart from the Royal Decree of 1852 reaffirming the introduction of the Byzantine legislation (Alivisatos, op. cit. pp. 494ff) Parliamentary Acts of 1861; 1923; 1939; 1940 (ibid. pp. 484ff) a series of Synodical encyclicals with similar pronouncements could be found in the various Collections such as M. Theotokas, Legislation of the Ecumenical Patriarchate (in Greek) Constantinople, 1897 pp. 184ff; St. Yannakopoulos Collection of Encyclicals of the Holy Synod of Greece since 1833 together with Royal decrees and relative civil law, Athens, 1901; Chrysostomos Themelis, Synodical Encyclicals of the Church of Greece, Athens 1956 vol. I-II; cf Zhishman, op. cit. pp. 470ff.

4) Article 1372, Alivisatos ibid. o. 725

5) Article 1350, ibid. pp. 722-723

6) Articles 1350 para 2 and 1376 para. 2 ibid. pp. 722-724 cf. Peter Konstantakopoulos, The Contracting of Marriage (in Greek) Kalamata, 1967 pp. 34-38, Mantzouneas, op. cit.

1) Hexabiblos, op. cit. p. 227

paid special attention in observing this requirement during the period Armenopoulos' Hexabiblos was in force⁽¹⁾.

The 1940 Civil Code is more specific regarding the minimum age for marriage and those who are to give their consent for the marriage of a minor⁽²⁾. Accordingly marriage is allowed for a man if he is eighteen years old and for a woman if she is fourteen years old; but at that age they are both not yet emancipated until they have reached their twenty first birthday⁽³⁾. This means that until then they have no legal right to enter into any legal contract and for this reason the legislator made a provision in such cases for the consent of those in authority over a minor to be required⁽⁴⁾. Those who have the right of consent for a minor's marriage are :

i) The natural father. He is the only one who has the exclusive authority to give his consent in such a case, unless he is dead or by a court's decision he has been deprived of the right of control over his children⁽⁵⁾.

ii) The natural mother. She has the right to act on behalf of the father when he is legally deprived of his right of control over the children, or if he is dead. Then the mother's consent is required on the condition that she has legally the care of her minor child or

1) Panayotakos, On the Impediments, op. cit. pp. 142-143

2) Articles 1352 and 1373 in Alivisatos, op. cit. pp.723ff
Articles 1500, 1503, 1525, 1526, 1528, 1530, 1584, 1595 -
1600, 1602-1603, 1628, 1666, 1668 -1670 in Civil Code,
(in Greek) published by the Law Society, Athens, 1979
pp. 203ff

3) ibid. p. 20, Article 127

4) Harry Vassilaki, op. cit. p. 16

5) Articles 1500-1503, 1525-1526, 1584 of 1940 Civil Code,
op. cit. pp. 203ff

children⁽¹⁾.

iii) The adoptive parent to whom parental control has been entrusted legally⁽²⁾.

iv) The guardian, who is the person appointed in accordance with the provisions of the Civil Code⁽³⁾ either by the natural parents before they die or in their will, or by the Court⁽⁴⁾.

v) The civil court. In case of unreasonable refusal of consent by any of the above authorities who is legally in charge a minor may appeal to the proper court which, having examined the grounds for refusal, may authorise such marriage⁽⁵⁾.

The parental consent or authorisation should be given in writing and submitted to the Parish priest where notice of the intended marriage has been given⁽⁶⁾.

5. Capacity or competence

a) Mental. Armenopoulos' Hexabiblos refers to the Byzantine legislation according to which "an insane is prohibited to contract a marriage"⁽⁷⁾ and specifically mentions the Novels 111 and 112 of Emperor Leo VI which state that

1) Article 1503 Harry Vassilaki op. cit. p. 17

2) Civil Code, Article 1584, op. cit. p. 214

3) Civil Code, Article 1601, op. cit. p. 216

4) Civil Code, Article 1600, op. cit. p. 216

5) Article 1352, Alivisatos, op. cit. p. 723; Panayotakos On the Impediments, op. cit. p. 34

6) ibid. p. 34

7) Hexabiblos, op. cit. p. 220

"mania is an impediment for espousals. If it appears during the time of the espousals or even on the same day of marriage then automatically the marriage is cancelled; but if it appears after the contract of marriage, then the man should bear the misery for three years and if during that time his wife has not recovered, only then he can apply for a divorce. Likewise the wife has to bear the misery for five years and if during that time her husband has not recovered then she may be divorced"⁽¹⁾.

The 1940 Civil Code does not mention mental capacity or competence as a condition for marriage, but it does mention insanity as a ground for divorce⁽²⁾. But it is assumed that mental sanity is a prerequisite for contracting a valid marriage, and therefore the Parish priest who meets the couple for the preliminary arrangements and formalities of the intended marriage should be able to ascertain himself that the parties fully understand the duties, obligations and responsibilities of the contract they are entering into⁽³⁾.

1) Hexabiblos IV 1, 15 op. cit. p. 220

2) Article 1443 of the Civil Code, op. cit. p. 195 ;
Alivisatos, op. cit. p. 728

3) Panayotakos, On the Impediments, op. cit. pp. 25-26

b) Physical. Referring again to the Byzantine legislation Armenopoulos' Hexabiblos does not consider physical incompetence as an impediment for contracting a marriage, because according to that legislation "not the intercourse but the mutual consent constitutes marriage"⁽¹⁾. Similarly, according to the 1940 Civil Code such lack of capacity is not considered as an impediment to marriage but only a ground for divorce⁽²⁾.

For most of the conditions already mentioned in this first group evidence is required from the interested couple to be submitted to the celebrant priest of the intended marriage, i.e.

- 1) Birth and baptismal certificate to verify the age and that they are members of the Church,
- 2) signed documents of the parental consent or authority for the marriage if one or both of the parties are minors;
- 3) signed application for the bishop's licence which is also a form of their mutual consent that they intend a lifelong union and that they are not acting under any constraint (3).

1) Hexabiblos IV 19 p. 228

2) Civil Code Article 1446 op. cit. p. 195; Alivisatos, op. cit. p. 728 There is no doubt that both mental and physical capacity are equally fundamental conditions for contracting a healthy and happy marriage. However it would be most important for the future happiness and interest of each and both of the couple and of their families, but also for the sake of a healthy society, if a provision is made for a medical certificate as well to be required which will cover these aspects too.

3) Konstantakopoulos, op. cit. pp.98-99

b) Impediments which refer to the existing relationship
between the two parties who are to marry

The impediments of this group derive from the bond which is created through marriage, baptism or a legal act or through illegal connections⁽¹⁾. The impediments to marriage of this group are the following :

1. Consanguinity. This relationship results from a birth, through which a bond of blood is created not only between the children born and their parents, but also between the children themselves and their parents' relatives. From the early times consanguinity was placed among the main impediments to marriage and this prohibition relied on the Levitical rule forbidding a man to have carnal knowledge with a woman who was "near of kin to him"⁽²⁾. Later the explanation was given on biological and moral grounds; firstly, that new and different blood should be mixed in a family, and secondly, to protect and enforce the sense of decency by avoiding free and unobserved associations between relatives living in the same household⁽³⁾.

1) Civil Code, Articles 1356 - 1363 Alivisatos op. cit.
pp. 723-724

2) Leviticus 18, 6 see also pp. 10, 58, and 67-73

3) see note 1 p. 80

In accordance with the Byzantine computation the degrees of relationship are counted by adding the births that separate two parties from their common ancestor⁽¹⁾. This method of computation which is still in use in the Greek Orthodox Church will be presented here in a way as much as possible easy to follow.

As already mentioned relationship whether through consanguinity or affinity is counted by degrees. Each birth counts for one degree. The number of births which separate two persons from their common ancestor (or their common denominator in the case of affinity i.e. the two persons who by their marriage have brought closer their families into a relationship of affinity) shows the degree of relationship which these two persons have.

In the diagrams which will follow

the sign O will indicate a male person, and

the sign V will indicate a female person⁽²⁾.

Diagram I

A is the father of B

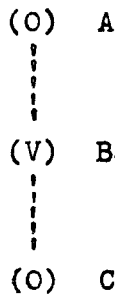


They are separated by one birth.

They are therefore related to the first degree of consanguinity.

1) Armenopoulos' Hexabiblos, op. cit. IV 7, 1-35 pp. 231-238
 2) With regard to the method of computation cf Melissinos Christodoulou, The Impediments to Marriage, op. cit. pp. 46ff, also Zhishman, op. cit. vol. I pp. 397ff; Panayotakos, On the Impediments of Marriage, op. cit. pp. 54ff Usually a third sign is also used e.g. X to indicate a married couple or a single parent either the father or just the mother. But as this might be confusing it was thought that it will be more helpful here if signs are used just for male and female.

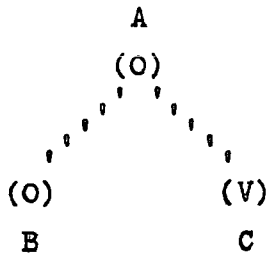
Diagram II



'A' is the father of 'B' and also the grandfather of 'C'. So the grandfather 'A' is related to his grandson 'C' to the second degree of consanguinity because they are separated by

two births. This relationship of consanguinity is called of the direct line and depending on the starting point it is known as ascending or descending. But apart from the direct line there is also the side line of relationship of collateral.

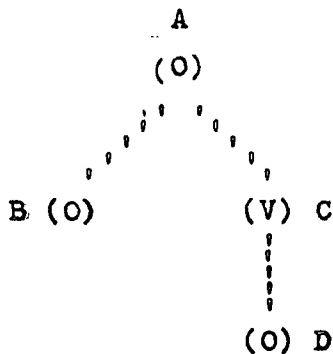
Diagram III



'A' is the father of 'B' and 'C'. 'B' and 'C' are brother and sister. Each of them is related with their father to the first degree of consanguinity in the direct ascending line.

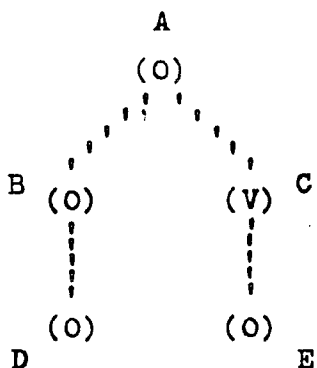
But between themselves 'B' and 'C' are related to the second degree of the side line or collateral because in between themselves there are two births that separate them.

Diagram IV



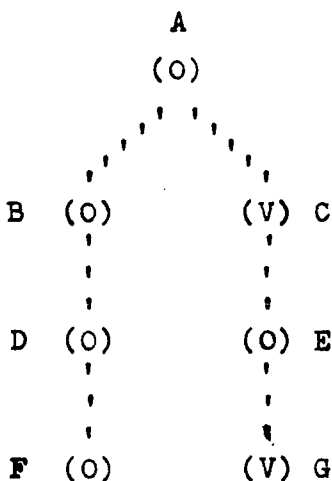
'B' is the uncle of 'D' and they are related to the third degree on the side line because in between themselves there are three births that separate them.

Diagram V



'A' is the father of 'B' and 'C' and the grandfather of 'D' and 'E'. 'D' and 'E' are cousins and they are related to each other to the fourth degree in the collateral side because they are separated by four births. 'D' and 'C' and nephew and aunt and they are related to the third degree. Likewise 'E' and 'B' are nephew and uncle and they are related to the third degree.

Diagram VI



'F' and 'G' are second cousins and they are related to the sixth degree because in between themselves there are six births that separate them.

Justinian law prohibited the marriage for consanguinity sake in all the direct line,⁽¹⁾ and later on the sixth General Council of Troullo(692) forbade the marriage between first cousins i.e. up to the fourth degree⁽²⁾ and this decision received later the imperial sanction (diagram V) and was even extended to the sixth degree (diagram VI) i.e. between

1) Armenopoulos' Hexabiblos IV 7,9 op. cit. p. 233
 2) Canon 54 of Troullo cf Alivisatos, op. cit. pp. 99-100

the grandchildren of a brother and sister⁽¹⁾. Through the influence of the Church this impediment was again extended up to the seventh degree and as such it was introduced in Greece in 1835⁽²⁾. A new attempt by the Church to extend the prohibition up to the eighth degree failed⁽³⁾ because . . . herself many times made concessions through dispensation and allowed marriages to take place even in the sixth degree⁽⁴⁾. Through the Encyclicals of 6 March 1873, 18 May 1877 and 5 December 1899 the Holy Synod of the Greek Church reaffirmed the prohibition of consanguinity up to the sixth degree⁽⁵⁾ and this rule was observed in practice until 1923 when through an amendment by the State on the Constitutional Law of the Greek Church a provision was made for allowing marriages on the sixth degree of consanguinity at the discretion of the local Bishop⁽⁶⁾. A Commission which was appointed in 1930 to draw a draft for a new Civil Code recommended in 1934 that consanguinity should be an impediment up to the fourth degree, but on certain occasions and on a court's decision such marriages should be allowed even in the fourth degree⁽⁷⁾. This caused a strong reaction from the part of the Church⁽⁸⁾ as a result of which a

1) Panayotakos, op. cit. p. 65

2) P. Panayotakos, The Civil Code and the Church on the Law of Marriage, Athens, 1940 (in Greek) p. 141

3) ibid. p. 133

4) Giannakopoulos, op. cit. pp. 476ff

5) D. Christopoulos, Collection of Encyclicals of the Greek Church, Athens, 1877 pp. 308ff

6) Act on the Constitution of the Greek Church, 31/12/1923 Article 67, Alivisatos, Holy Canons, op. cit. p. 531

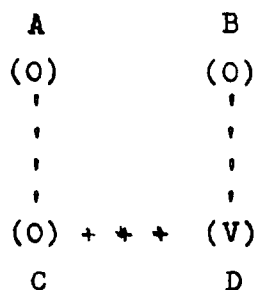
7) Panayotakos, On the Impediments, op. cit. p. 69

8) Chrysostomos Themelis, op. cit. p. 263

law was passed in 1939 adopting the first part of the recommendation without the provision for dispensing the fourth degree through a court's decision. The Church was very reluctant to accept this legislation⁽¹⁾ but a year later, when it was incorporated in the 1940 Civil Code the Church's reservations were removed⁽²⁾ and since then Church and State in Greece agree that consanguinity is an impediment to marriage up to the fourth degree which is concurrent with the 54th canon of the General Council of Troullo⁽³⁾.

2. Affinity. The relationship of affinity is created between two families through a marriage between a member of the one family and another member of the other family⁽⁴⁾. The method of computation of the degrees of affinity is quite similar to that of consanguinity as it will be shown in the following diagrams.

Diagram VII



'A' is the parent (father) of 'C' and 'B' is the father of 'D'. Through the marriage of 'C' to 'D' 'A' now becomes the father-in-law of 'D' i.e. 'A' and 'D' are now related to the first

degree of affinity, whereas 'B' and 'D' are related to the first degree of consanguinity. In the same way 'C' now

1) Chrysostomos Themelis, op. cit. p. 250

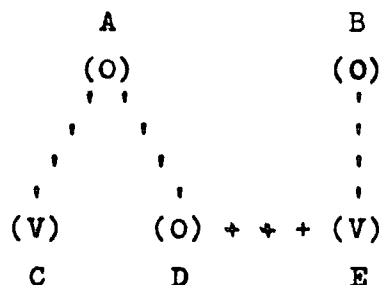
2) ibid. p. 263

3) Alivisatos, Holy Canons, op. cit. pp. 99-100

4) Panayotakos, On the Impediments, op. cit. p. 75

becomes the son-in-law of 'B' and hence they are related to the first degree of affinity.

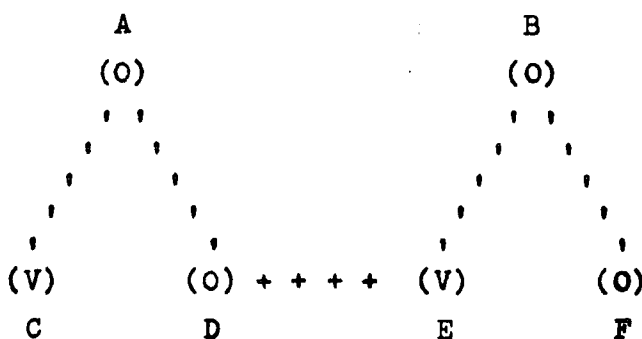
Diagram VIII



Through the marriage of 'D' and 'E' the two families of 'A' and 'B' become closer. Whereas 'C' with her brother 'D' are related to the second degree of consanguinity, now

with the marriage of 'D' and 'E', 'C' becomes the sister-in-law of 'E' with whom she is related to the second degree of affinity.

Diagram IX



In this diagram (IX) 'C' and 'D' are brother and sister. 'C' is related to 'A' (her father) to the first degree of consanguinity, and to 'D' (her brother) to the second degree of consanguinity. With the marriage of her brother 'D' to 'E' she now becomes sister-in-law of 'E' and she ('C') is related to her ('E') to the second degree of affinity. Similarly she ('C') becomes related to 'B' to the third degree and with 'F' (her brother-in-law) to the fourth degree of affinity.

The pronouncements of the early Church placed affinity as an impediment to marriage up to the fourth degree⁽¹⁾. Later the Church extended the prohibition to the fifth and sixth degree⁽²⁾; but the Byzantine legislation which was introduced in Greece accepted affinity as an impediment up to the fourth degree⁽³⁾. However, as the Church was in charge of the preliminary requirements her rule was observed until 1923 when a revolutionary Government amended the Constitutional law of the Greek Church and the fifth degree of affinity was also excluded as an impediment⁽⁴⁾. The new law was applied until 1934 when⁽⁵⁾ it was recommended that affinity should be reduced to the third degree and in certain cases to be set aside altogether at a court's decision. Accordingly an Act was passed in 1939⁽⁶⁾ which made affinity an impediment up to the third degree but the second half of the recommendation was ignored and as such the law was incorporated in the 1940 Civil Code⁽⁷⁾. According to this legislation, marriage between relations up to the third degree of affinity is prohibited, under pain of nullity⁽⁸⁾. Also marriage

1) Canon 54 of Troullo cf. Alivisatos, Holy Canons, op. cit. pp. 99-100

2) Ralli and Potli, op. cit. vol. V pp. 11, 41-45

3) Armenopoulos' Hexabiblos, op. cit. IV 7, 12 p. 233

4) Constitutional Law of the Autocephalous Church of Greece Article 67, in Alivisatos, Holy Canons, op. cit. p. 531

5) Gregory Kassimati, Treatise of Family Law, (in Greek) Athens, 1939 pp. 80ff

6) Report of the Commission, Article 13, ibid. p. 80

7) Civil Code, Article 1357, Alivisatos, ibid. 723

8) Article 1357 in relation with Articles 1372 and 1464, Alivisatos, ibid. pp. 723, 725 and 727

is prohibited between a blood relation to the second degree on the one side with a blood relation to the second degree on the other side⁽¹⁾. This impediment continues to exist even if the marriage has been dissolved through divorce or annulment⁽²⁾. The brother has no right to marry his brother's sister-in-law or vice versa. It has been suggested by some legal experts that in practice this impediment could be evaded by a simultaneous double marriage of two brothers with two sisters⁽³⁾, to which however the Church objects on the same moral and ethical grounds⁽⁴⁾.

On the whole the legislation of the 1940 Civil Code on affinity agrees completely with the pronouncements of the 54 canon of the Council of Troullo, hence the Greek Church accepted and continues to observe this law since it came to force⁽⁵⁾.

3. Spiritual relationship. This bond is created through baptism between god-parent and god-child and their respective relatives⁽⁶⁾. Since the early days of Christianity such spiritual relationship was considered as an impediment and marriage between god-parent and god-child was strictly forbidden⁽⁷⁾. It seems, however,

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- 1) Civil Code, Article 1358 para. 1, Alivisatos, ibid. p. 723
 2) Civil Code, Article 1358 para. 2, ibid. p. 723
 3) Harry Vassilaki, op. cit. p. 20
 4) P. Konstantakopoulos, op. cit. p. 78
 5) E. Mantzouneas, op. cit. vol. I p. 136
 6) P. Panayotakos, op. cit. p. 116
 7) P. Konstantakopoulos, ibid. p. 80

that the Church in her practice extended the prohibition especially after the General Council of Troullo (692) considered spiritual relationship from baptism as more important even than consanguinity⁽¹⁾. This gave rise for extending further the prohibition to the following grounds which were sanctioned by the civil legislation as well⁽²⁾:

- a) marriage between the son of the god-father with the god-child;
- b) marriage between the son of the god-father and the mother of the god-child;
- c) marriage between the god-father's brother with the god-child or his/her mother;
- d) marriage between the god-father or his son with the daughter of the god-child;
- e) marriage between persons having the same god-father⁽³⁾.

Furthermore in order to bring the prohibition up to the level of consanguinity the Church extended the prohibition to the seventh degree⁽⁴⁾.

Such was the legislation on spiritual relationship which was introduced in Greece and was later repeated on many occasions⁽⁵⁾. However, from evidence of various Encyclicals which followed, it seems that the Church often had to make concessions to her own regulations which she could not apply in practice⁽⁶⁾ whilst the

1) Canon 53 of the Council of Troullo, Alivisatos, op. cit. p. 99

2) P. Panayotakos, op. cit. p. 117; Konstantakopoulos, op. cit. pp. 80-81

3) M. Sakellaropoulos, The Ecclesiastical Law of the Eastern Orthodox Church, Athens, 1898, p. 493 (in Greek)

4) P. Panayotakos, Civil Code and the Church on Marriage op. cit. p. 163; Ralli & Potli, op. cit. vol. IV, 482

5) Zhishman, op. cit. vol. II p. 511 It should be noted here that the method of computation of the spiritual relationship is similar to that already mentioned for affinity and consanguinity in pp. 176-181

6) Zhishman, ibid. p. 511

State retained the impediment to the third degree⁽¹⁾ and repeated it into its legislation, which eventually the Church accepted⁽²⁾ and as such remained in force until 1934. It was then that a recommendation was made that, if this impediment is not to be abolished altogether at least it should be limited only between the god-father and the god-child⁽³⁾. On the ground of this recommendation a law was passed in 1939 forbidding the marriage between god-father and god-child, and also between god-father and the mother of the god-child⁽⁴⁾. This law was later incorporated in the 1940 Civil Code according to which spiritual relationship through baptism is an impediment to marriage up to the second degree⁽⁵⁾. The Church accepted this legislation and observes it in her practice to-day⁽⁶⁾, since it is not contrary to the 53 canon of the General Council of Troullo⁽⁷⁾.

1) P. Panayotakos, Civil Code and the Church on Marriage, op. cit. p. 169

2) D. Christopoulos, Collection of Encyclicals of the Greek Church (in Greek) Athens, 1877, p. 308

3) P. Panayotakos, ibid. pp. 164ff

4) Act 2017/1939

5) Civil Code, Articles 1361 and 1372 in Alivisatos' Holy Canons, op. cit. pp. 724-725

6) E. Mantzouneas, op. cit. pp. 137-138

7) Canon 53 of Troullo Council, Alivisatos, ibid. p. 99

4. Relationship through adoption. This bond results from a civil act through which a person takes under his care and authority a younger person as his own child⁽¹⁾. In the early Church there was no pronouncement on adoption since this was a purely civil matter⁽²⁾. First was the Emperor Leo VI who demanded the religious blessing for the act of adoption⁽³⁾ and it was then that it was made an impediment to marriage on the same moral and ethical grounds as in the cases of affinity and spiritual relationship⁽⁴⁾. Accordingly a law was passed prohibiting the marriage between persons related through adoption up to the third degree, even if the adoption had been relinquished⁽⁵⁾.

Soon after this legislation was introduced in Greece, the Synod of the Greek Church pronounced that, adopted children were forbidden to marry with relatives of their adoptive parent to the same degrees of consanguinity, as if they were natural children⁽⁶⁾. However this rule was not always observed in practice⁽⁷⁾. For this reason a law was passed in 1939 which a year later was incorporated in the Civil Code of 1940 according to which marriage between an adoptive parent (or his/her descendants) and the adopted is prohibited⁽⁸⁾. The Greek Church regards adoption as similar to the relationship through baptism and applying the civil legislation considers it as an impediment to marriage up to the second degree⁽⁹⁾.

1) C.M.Ralli, On the Institution of Adoption, Athens, 1891, p.15

2) Panayotakos, On the Impediments, op. cit. p. 123

3) Armenopoulos' Hexabiblos II 8, 1-6, op.cit. pp. 148-149

4) ibid. p. 239 IV 8,6

5) Ralli & Potli, op. cit. II p. 430

6) Meletios Christodoulou, op. cit. p. 208

7) ibid. p. 208 8) C.C. Article 1360, Alivisatos, ibid. p.723

8) E. Mantzouneas, op. cit. p. 138

5. Relationship through guardianship. This bond is created through a legal act authorising a person to undertake the care and legal representation of a minor, an invalid or a mentally retarded person whose father has died or is legally or otherwise unable to exercise his parental control⁽¹⁾.

According to the Byzantine legislation which was introduced in Greece such authority created an impediment to marriage between the guardian and the girl under guardianship⁽²⁾. Even after the guardian had given an account of his commission and had relinquished his authority, marriage could not take place until the girl had reached her 25th birthday⁽³⁾. Also marriage was prohibited between the father, the son, the grandson or the brother of the guardian with the girl under guardianship⁽⁴⁾, but on certain occasions exceptions were made through a special permission⁽⁵⁾. This civil legislation was observed and applied by the Greek Church⁽⁶⁾ until 1940 when the Civil Code of that year made the following amendments :

Marriage between a guardian (or his descendents whether legitimate or not) and the person under guardianship is prohibited under pain of nullity, until the guardian relinquishes all his rights and obligations⁽⁷⁾ and this provision was made against any attempt of covering up mismanagement from the part of the guardian. This law is to-day observed and practiced by the Greek Church⁽⁸⁾.

1) P. Konstantakopoulos, op. cit. p. 84

2) Hexabiblos IV 7, 23, op. cit. p. 236

3) ibid. p. 236

4) ibid. IV 7, 24 p. 236

5) ibid. IV 7, 25, p. 236

6) Panayotakos, op. cit. p. 130

7) Articles 1362 & 1372 of C.C., Alivisatos, op. cit. pp. 724-725

8) E. Mantzouneas, op. cit. p. 138

6. Adultery. Adultery has always been considered as an offence against the institution and sanctity of marriage. In the Old Testament it was strictly prohibited under severe penalties of death⁽¹⁾. In the New Testament our Lord Himself condemns not only the act but even the mere thought of it which He equals with adultery⁽²⁾. Hence the Church has always considered adultery as a grave sin and pronounced in her canons strict penalties to those guilty, such as, confinement to a Monastery and exclusion from the Holy Communion for periods varying up to five years and forbidding the marriage between the accomplices⁽³⁾.

In the Byzantine law adultery was also considered as a punishable crime⁽⁴⁾ and an impediment to marriage⁽⁵⁾. Accordingly the legislation which was introduced and observed in Greece since 1833 regarded adultery as a punishable act and an impediment to marriage⁽⁶⁾. For the first time this impediment was ignored in the Report of the 1934 Commission which was established to propose a draft for the new Civil Code. However, the 1940 Civil Code retained the prohibition and forbids the marriage between persons who have been found guilty of adultery⁽⁷⁾ and this legislation being in agreement with the canons and pronouncements of early Fathers and of various Councils has been accepted by the Greek Church and is observed till the present time⁽⁸⁾.

1) Exodus xx, 13 & 17; Deut. v, 18-21; Levit. xi, 20; xx, 10

2) Matth. v, 27-28; Mark x, 11-12; Rom. vii, 3

3) Apostolic Canons 48 & 61; Canon 20 Council of Ancyra; Canon 8 of Neocaeasarea; Canons 58 & 57 of St. Basil;

4) Hexabiblos VI 2, 16 op. cit. p. 346 5) ibid. pp. 346-347

6) see p. 153

7) C.C. Article 1363, Alivisatos, ibid. p. 724

8) E. Mantzouneas, op. cit. p. 138

c. Impediments which refer to already existing relationship of one or both of the parties with other connections.

1. The already existing marriage. In accordance with this impediment a couple who wish to marry must both be free of any other marriage tie i.e. a person already married cannot contract a new marriage. This is in accord with the christian notion of monogamy and explains why sporadic practice of polygamy in Judaism was condemned by our Lord, who explicitly stated that monogamy was instituted by God⁽¹⁾. This notion was supported by St. Paul⁽²⁾, the early Fathers⁽³⁾ and in a series of canons of Church Councils⁽⁴⁾. The principle of monogamy was also observed in ancient Greece⁽⁵⁾ and in the Roman and Byzantine Empires⁽⁶⁾.

As such it was introduced in Greece⁽⁷⁾ where during the period since 1833 both Church and State considered an already existing marriage as an impediment for contracting a new one without the previous marriage being first dissolved⁽⁸⁾. This principle was repeated in the Report of the 1934 Commission⁽⁹⁾ and also was incorporated in the Civil Code of 1940⁽¹⁰⁾.

1) Matth. 19, 4-10; Mark 10, 9-12

2) Romans 7, 2-3

3) Canons 9, 29, 35, 37, 77 of St. Basil of Alivisatos op.cit. pp. 361, 370-372, 382; canon 15 of Timotheos Patriarch of Alexandria (385) ibid. p. 404

4) Apostolic canon 48, ibid. p. 147; canon 87 of the Council of Troullo, ibid. p. 111; canon 20 of the Council of Ancyra, ibid. p. 163; canon 102 of the Council of Carthage, ibid. p. 279

5) Athinaios, XIII 55, 2; Ploutarch, Lykourgos etc. cited in P.Panayotakos, On the Impediments, op. cit. p. 38

6) ibid. pp. 37-38

7) Armenopoulos' Hexabiblos IV 15, 13-14, op. cit. pp. 272-275

8) M. Gedeon, op. cit. vol. I p. 83f; Panayotakos, ibid. pp. 37-41, 167ff; Konstantakopoulos, op. cit. pp. 44ff

9) Report of the Commission for the Draft of the Civil Code, article 31

10) Article 1354 CC. Alivisatos, ibid. p. 723

According to the 1940 legislation the contract of a new marriage is strictly prohibited, under pain of nullity, if the already existing marriage is not annulled or dissolved either by divorce or the death of the previous partner⁽¹⁾. Under the Penal Code bigamy is considered a crime and is punished with imprisonment⁽²⁾.

Following and observing this legislation the Greek Church does not authorise a marriage unless signed evidence is given by two witnesses that the parties are free from any previous attachment or the necessary documents are presented, attesting the dissolution or annulment of a previous marriage⁽³⁾.

In the Byzantine legislation existing espousals with another person were treated also as an impediment to marriage⁽⁴⁾. But in order to avoid the problems created from such situations the Greek Church as early as 1834 in a series of Encyclical letters forbade the separate blessing of espousals⁽⁵⁾ and since then the ritual part of the betrothal is joined together with the actual ceremony of marriage⁽⁶⁾. The prohibition of the separate blessing of the espousals was repeated in the 1923 Constitutional

1) Article 1354 of the Civil Code, Alivisatos *ibid.* p. 723

2) Melissinos Christodoulou, *op. cit.* p. 12 Article 356

3) Panayotakos, *On the Impediments*, *op. cit.* p. 39;
Konstantakopoulos, *op. cit.* pp. 43-46 and 98-99

4) Armenopoulos' *Hexabiblos*, *op. cit.* p. 218

5) Dam Christopoulos, *op. cit.* pp. 66-88 see also footnote 1 in the latest edition of Armenopoulos' *Hexabiblos*, *op. cit.* pp. 218-219

6) see pp. 301 and Appendix II The Liturgical rite of Marriage in the Greek Orthodox Church, pp. 311

Law of the Greek Church⁽¹⁾ pronouncing null any such espousals and providing severe penalties to the priest who ignored the prohibition and blessed them and who could also be punished with an up to a year's imprisonment⁽²⁾. The 1940 Civil Code does not mention existing espousals as an impediment to marriage nor the Church considers them as such since no separate Church blessing is allowed to take place and if it does it is considered null and void.

2. The fourth consecutive marriage. The Church has always accepted second marriage with reluctance⁽³⁾ In the case of third marriage her reluctance was even greater, owing to the attitude of the Fathers. St. Basil speaks of the third marriage as fornication⁽⁴⁾ whilst according to St. Gregory of Nazianzus (320-390) "first marriage conforms with the law of the Church, the second is tolerated for indulgence, the third is adultery, but the fourth undoubtedly is sheer corruption"⁽⁵⁾. The civil law,

1) Article 69 of the 1923 Constitutional Law of the Greek Church 31/12/1923 in H. Alivisatos, Holy Canons, op. cit. p. 531

2) Article 356 of the Penal Code, cf Harry Vassilaki, op. cit. p. 19

3) Tertulian, De monogamia 10; Ad Uxorem 1; Clement of Alexandria, Stromates III, 12; Cyril of Jerusalem, Sacramental Catechism IV, 26; Epiphanius, Contra Haereses II, 2; John Chrysostom Homily XV of Konstantakopoulos, op. cit. p. 49 and Panayotakos, On the Impediments, op. cit. pp. 42ff

4) Canons 4 and 50 of St. Basil in Kalli & Potli, op. cit. vol. I p. 275

5) Homily XXXI P.G. 36, 292

however, demonstrated a more tolerant attitude than the Church for successive marriages up to the third⁽¹⁾. This law therefore which was introduced in Greece regulated the practice of the Church on this point⁽²⁾. Following this past tradition of the Church and the State, the 1940 Civil Code, which is at present in force, retained the prohibition and declared the fourth marriage prohibited under pain of nullity, if the third marriage was valid and whether it was dissolved by divorce or death of one of the parties⁽³⁾. However, if one of the previous three marriages was declared null the fourth marriage is possible⁽⁴⁾.

1) Justinian Code V 9, 6; Novel XXVI; Procheros Nomos IV, 25 Ralli & Potli, op. cit. Vol. I p. 275 The Empress Irene the Athenian (797-802) was the first to have prohibited the third marriage (Ralli & Potli, ibid. vol. V p. 252). Basil 1st the Macedonian (867-886) allowed the third marriage on condition that the parties concerned will comply with the Church's penance, but at the same time he strictly prohibited the fourth marriage under pain of nullity (Procheros Nomos IV, 25). These pronouncements were repeated by his son Leo VI (886-912) who, however, was the first to break his own enactment by contracting a fourth marriage in order to legitimate his son Constantine (cf Vlassios Fidas, Church History, Athens, 1977, (in Greek) vol. II pp. 73-77). His action caused a strong reaction from Patriarch Nicholas the Mystic (901-907; 912-925) who pronounced the marriage null and excommunicated the imperial couple and at the same time he defrocked the priest who had celebrated the marriage. In retaliation the Emperor invited to Constantinople representatives from the Churches of Roma, Alexandria, Antioch and Jerusalem to consider the matter, and despite the opposition of the Patriarch Nicholas the validity of the fourth marriage of Leo VI was recognised and the Imperial couple were released of the excommunication. The Patriarch was then deposed and exiled (Fidas, ibid. pp 75-76; P.G. 111, 204) and this caused a wider crisis within the Empire which lasted for many years regarding the validity of the Emperor's fourth marriage and in particular regarding the attitude of the Pope's

3. Holy Orders and monastic life. In accordance with St. Paul's teaching the early Church allowed marriage for clergy of all ranks⁽¹⁾, at least before their ordination. This is verified by the 26 Apostolic canon which explicitly allows marriage after ordination only for readers and cantors, who were also considered as clergy of the lower rank⁽²⁾. It seems, however, that because a certain laxity was noticed regarding this rule and there were some cases of deacons who were married after their ordination⁽³⁾, the local Synod of Ancyra (314) allowed this practice on condition that upon their ordination the deacons should notify the Bishop of their intention to marry in the future⁽⁴⁾. As in other matters of Church discipline, so

representatives (Fidas, ibid. pp. 76-77; Konstantakopoulou, op. cit. p. 50). Just before his death Emperor Leo VI recalled from exile the Patriarch Nicholas who was reinstated in 912. A few years later the Patriarch convened a new Synod (921) with representatives from all the Churches including Rome. By an Act or Tome of Union the relations between the two Churches of Constantinople and Rome were restored, and the fourth consecutive marriage, which had caused the disruption, was declared prohibited (Fidas, ibid. p. 77; P.G. 111, 248-252). The same Act authorised the third marriage on certain conditions i.e. if the parties are over forty years old and already have children, and after they have complied with certain Church penances, such as, to be debarred from receiving Holy Communion for a period of two or three years and during this time to attend the divine liturgy from a special part of the Church building reserved for those under penance (see canon 4, 50 and 80 of St. Basil, Alivisatos, op.cit. pp. 358, 382). This Tome or Act of Union since then regulated the practice of the Church on this point (see P.Panayotakos, On the Impediments, op. cit. p. 46).

- 2) Panayotakos, On the Impediments, op. cit. p. 46
- 3) Articles 1355 and 1372 of the Civil Code, Alivisatos, ibid.
- 4) Articles 1350-1364, ibid. pp.722-724
- 1) I Timothy 3, 2; Tit. 1, 6
- 2) Apostolic Canon 26, Alivisatos, ibid. p. 142
- 3) Basil Stefanidis, Church History (in Greek) Athens, 1948 p. 85
- 4) Canon 10, Council of Ancyra, Alivisatos, ibid. p.160

also in regard to marriage the General Council of Troullo (692) was a turning point in its history. It was then definitely ruled that priests, deacons and sub-deacons should not be debarred from marriage, though they were forbidden to marry after ordination⁽¹⁾. It was then that the prohibition of marriage after ordination was established as well as the rule of celibacy for the Bishops who were selected from the unmarried or widowed clergy⁽²⁾. This civil and ecclesiastical legislation was introduced in Greece⁽³⁾ and has been applied in practice by both Church and State⁽⁴⁾. It was repeated in the 1940 Civil Code and is observed by the Church till the present time⁽⁵⁾. According to this legislation marriage of a clergyman or a monk is prohibited to all the degrees⁽⁶⁾. Finally, by virtue of the notion of the indelible character of ordination, Holy Orders as an impediment to marriage continuous to exist even if a cleric is deposed or defrocked⁽⁷⁾.

1) It was first the Council of Neocesarea (315) that prohibited the marriage of priests after their ordination (Canon 1, Alivisatos, ibid. p. 160). The Council of Troullo ruled that Bishops were forbidden to cohabit with their wives, who were required to retire to a monastery at some distance (Canon 12, ibid. p. 81 and canon 48, ibid. p. 98). If before ordination a priest had contracted an unlawful marriage in good faith, he was to be suspended from exercising his office and the marriage was dissolved (canon 26, ibid. p. 87). A monk attempting marriage was to be treated as a fornicator (canon 44, ibid. p. 96)

2) P. Panayotakos, On Marriage and Celibacy of the Clergy Athens, 1940 (in Greek) pp. 34-37, 75

3) Armenopoulos' Hexabiblos, op. cit. IV 15, 8, p. 271

4) Harry Vassilaki, op. cit. p. 21; Panayotakos, On the Impediments, op. cit. p. 48f

5) Anastassios Christofilopoulos, The Greek Ecclesiastical Law, (in Greek) Athens, 1965, pp. 213-240; E. Mantzouneas op. cit. p. 136

6) Article 1364 of Civil Code, Alivisatos, ibid. p. 724

7) Panayotakos, On the Impediments, op. cit. p. 49

4. Difference of (a) religion or (b) denomination.

a. Making use of her principle of Economy⁽¹⁾ the early Church tolerated marriages of Christians with members of other religions⁽²⁾. It was Constantine the Great who in 339 pronounced a prohibition regarding marriages of Christians with Jews even under pain of death⁽³⁾. Later, on the basis of St. Paul's advice that Christians should not mix with the unfaithful⁽⁴⁾ and considering that such mixed unions were not based on the Christian notion of marriage as a sacrament and a union like that of Christ and His Church, and because of the risk these members to be forced to denounce their faith or to have their children brought up into another religion, the Church felt obliged to prohibit the marriage of Christians with non-christians⁽⁵⁾. On these grounds the fourth General Council of Chalcedon (451) extended the prohibition of marriage not only with the Jews but also with all non-christians which later was sanctioned by the civil legislation⁽⁶⁾. Since then difference of religion is considered by both civil and ecclesiastical legislation as an impediment for contracting a marriage⁽⁷⁾ unless the non-christian party consents to be baptised.

1) Regarding this principle of Economy in the Greek Orthodox Church see Appendix I pp. 283

2) It seems that this was based on St. Paul's opinion in I Corinthians 7, 10-12 which refers to marriages already contracted before the Christian party had joined the Church. The 21 Canon of the Council of Carthage (419) prohibited such marriages only for children of the clergy (Alivisatos, op.cit. p. 240; Panayotakos, On the Impediments, op.cit. p. 35)

3) Codex Theodosianus XVI 8,6, Zhishman, op. cit. p. 265

4) II Corinthians 6, 14-18

5) Panayotakos, ibid. pp. 33-34

b. The question of marriage between orthodox and non-orthodox Christians as an impediment to marriage has been dealt with in various Councils of the early Church. The reasons given in paragraph (a) of this chapter for prohibiting marriages of Christians with non-Christians also prevailed in this case. The Council of Laodicea (360) prohibited such marriages unless the non-orthodox, who was known as heretic, denounced his previous beliefs and joined the Orthodox Church⁽¹⁾. A similar pronouncement was also made by the Council of Chalcedon (451)⁽²⁾, but the General Council of Trullo (692) prohibited indiscriminately such marriages, unless they were contracted before the orthodox party had joined the Orthodox Church⁽³⁾. On the ground of these regulations Byzantine legislation of the time made similar pronouncements prohibiting the marriage between orthodox and heretics⁽⁴⁾.

6) Canon 14 of Chalcedon, Alivisatos, op. cit. p. 54; Zhishman, op. cit. vol. II pp. 291ff

7) Article 1353 of the 1940 Civil Code, Alivisatos, ibid. p. 724; E. Mantzouneas, op. cit. p. 138

1) Canon 31 of Laodicea, Alivisatos, ibid. pp. 202-203

2) Canon 14 of Chalcedon, ibid. p. 54

3) Canon 72 of Trullo, ibid. p. 106

4) Codex Theodossianus XVI 73, Zhishman, op. cit. vol. II p. 292 It should be noted here that, although in the course of time since the separation of East and West matters of faith and doctrine were also effected during that time there was no official pronouncement by an Ecumenical Council of the Orthodox Church, clarifying the position of the Western Churches. Only in 1756 the Ecumenical Patriarch Cyril V pronounced the Latin Church as heretical, (Ralli & Potli, op. cit. V, 614; Zhishman, op. cit. II p.355) and accordingly the prohibition of Trullo was applied for mixed marriages with members of the Latin Church. Ibid. p. 256

Accordingly the legislation which was introduced in Greece in 1835 not only forbade the marriage between an orthodox and a member of another religion, but also between christians of different denominations⁽¹⁾. Only the marriage contracted between members of the Greek Orthodox Church was considered as lawful and canonical⁽²⁾.

It was only after strong reaction, even from the government of France which was concerned about the interests of catholic christians who were living in Greece⁽³⁾, that a law was passed in 1861, which confirmed all mixed marriages contracted up to then between orthodox parties with christians of different denominations, and commanded that such mixed marriages in future would be allowed provided that the requirements of the Greek Orthodox Church were to be observed⁽⁴⁾. These requirements were :

- 1) that the marriage would be blessed by an orthodox priest; and
- 2) that the children of such a marriage would be baptised and brought up in the Orthodox Church⁽⁵⁾.

However the Church protested because this law was passed without her being consulted⁽⁶⁾ and it was only in 1869 that the Synod of the Greek Church made it known

1) Panayotakos, The Civil Code and the Church on Marriage, op. cit. pp. 78ff; Zhishman ibid. 365

2) The 1852 Act had no other provision for marriage except that contracted according to the rite of the Greek Orthodox Church, Alivisatos, op. cit. pp. 494ff

3) Zhishman, ibid. p. 367

4) Act 196 of 15 October 1861, Zhishman, ibid. p. 368

5) ibid. p. 366

6) ibid. p. 367

that such mixed marriages with a member of the Roman Catholic Church or of the Protestant Churches were to be recognised in the future by virtue of ecclesiastical Economy⁽¹⁾ and provided that the already mentioned requirements would be observed⁽²⁾. In this way the impediment of the difference of denomination was overcome and since then this legislation was observed in Greece by both Church and State. Only the 1934 Report of the Commission for a new Draft of the Civil Code tried to abolish it altogether⁽²⁾, but its recommendation was ignored and the 1940 Civil Code retained the impediment⁽³⁾.

In accordance with this legislation marriage between a Christian (orthodox or of another denomination) with a non-christian is in fact null ipso facto, by reason of this impediment of religion⁽⁴⁾. Marriage of members of the Greek Orthodox Church is not recognised unless it is blessed in accordance with the rites of the Greek Orthodox Church and by a canonically ordained priest of the Greek Orthodox Church⁽⁵⁾. The same requirement applies also in the case of a marriage between a member of the Greek Orthodox Church and a Christian of another denomination⁽⁶⁾. Marriage between

1) see Appendix I pp. 283 on the notion of Economy according to the Greek Orthodox Church

2) St. Giannopoulos, op. cit. pp. 506-508

2a) Chrysostomos Papadopoulos, late Archbishop of Athens, Concerning Marriage (in Greek) Athens 1979 p. 47

3) Alivisatos, op. cit. p. 724

4) ibid. p. 723 Article 1353

5) Article 1367, ibid. p. 724

6) Article 1367, ibid. p. 724

two parties of different denominations, neither of whom belongs to the Greek Orthodox Church, has to be celebrated in accordance with the liturgical rite of both denominations⁽¹⁾. Marriage, therefore has to be celebrated in accordance with the ritual of the religion to which the couple belong and this liturgical act is absolutely necessary, but sufficient for the formation of the matrimonial union⁽²⁾. A mixed marriage celebrated in a different way is inexistent⁽³⁾. This is a clear indication that the 1940 Civil Code of Greece recognises explicitly the sacramental or religious character of marriage without which (the religious ceremony or the sacramental rite) there is no marriage⁽⁴⁾. It must also be stressed that if, in conformity with canons of the early Church and the Byzantine legislation, mixed marriages are prohibited in principle⁽⁵⁾ (κατ'ἀκριβείαν) yet by virtue of Economy they are authorised in the Greek Orthodox Church and are recognised by the civil legislation, provided that the requirements already mentioned are observed⁽⁶⁾.

1) Article 1371 of the Civil Code, Alivisatos, op. cit. p. 725

2) Articles 1371 and 1367, ibid. pp. 725, 724

3) Article 1367, ibid. p. 724

4) Article 1367, ibid. p. 724

5) Articles 1353 and 1367 ibid. pp. 723, 724 In connection with the difference of religion and the contracting of mixed marriages there have been many efforts in the past for the introduction of civil marriage in Greece. However, taking into consideration what has already been presented on this matter the present Civil Code does not recognise any purely civil marriage. It results therefore that Greeks and alien residents who do not adhere to the orthodox faith or to a religion recognised by law or who claim to be atheists, cannot establish a marriage in Greece unless they are converted in the Orthodox Church or in one of the recognised religions of the State. With regard to recent developments which seem to be leading towards the introduction of civil marriage in Greece in the near future see pp. 256ff.

d. Conditional Impediments which refer to a temporary delay

1. Mourning year. This temporary impediment applies to a widow. In accordance with the Byzantine law which was introduced in Greece and to a great extent remained in force until 1940, for reasons of respect to the memory of the deceased husband, but also to avoid confusion regarding the real father of the offspring, in case the widow was expectant, she was prohibited to contract a new marriage before the completion of a year since the death of her husband⁽¹⁾. The same ruling applied also to a divorced woman⁽²⁾ and for both cases there was provision for penalties in case of breach⁽³⁾. Regarding this impediment, which did not apply for espousals,⁽⁴⁾ the Church did not make any pronouncement, but simply was referring to the existing civil legislation⁽⁵⁾. Following the birth of a child the widow was free to marry again⁽⁶⁾.

According to the 1940 Civil Code a divorced woman or a widow whose marriage has ended through annulment or death of her previous husband is not authorised to remarry before the expiration of a delay of ten months since the definite dissolution of the previous union⁽⁷⁾. If the woman gives birth to a child before the expiration of ten months, the remarriage is authorised immediately⁽⁸⁾.

1) Armenopoulos' Hexabiblos, op. cit. IV 7, 32 p. 237

2) ibid. IV 9, 2 p. 241

3) Ralli & Potli, op. cit. VI pp. 140-141

4) Hexabiblos 9, 5, ibid. p. 241

5) Panayotakos, On the Impediments, op. cit. p. 139

6) Hexabiblos IV 7, 32; IV 9, 2 ibid. pp. 237, 241

7) Article 1365 of the Civil Code para 1, Alivisatos, op. cit. 724

8) Article 1365 para. 2, ibid. p. 724

The non-observance of the delay does not invalidate the marriage⁽¹⁾, but carries penalties for the celebrant priest who is obliged to check the exact dates from the documents presented to him⁽²⁾.

2. Drafting licence. This impediment refers to Officers serving in the National Forces⁽³⁾. According to the rules and regulations of the Ministry of Defence and Public Order⁽⁴⁾ all Officers serving in the various Forces are expected before proceeding with any arrangement for their marriage to have secured the necessary permission from their superior authorities⁽⁵⁾. In the 1940 Civil Code there is no provision for this impediment. As far as the Greek Church is concerned on this point the Holy Synod decided in 1978 that marriage licence should be granted provided that there are no other impediments and that the responsibility should rest with the Officers themselves to apply for such a licence from their superior authorities⁽⁶⁾. Therefore lack of this licence does not invalidate the marriage⁽⁷⁾, but simply carries disciplinary action against the Officer from the part of his superiors⁽⁸⁾.

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- 1) Article 1355 in connection with Article 1372 of the Civil Code, Alivisatos, ibid. pp. 724, 725
 - 2) Article 50 of the Constitutional Law of the Greek Church, 1943 in Alivisatos, ibid. p. 562
 - 3) H. Vassilakis, op. cit. p. 22; Panayotakos, ibid. p. 138
 - 4) Penal Code 2803/1941 Article 106, Vassilakis, ibid. p. 22
 - 5) ibid. p. 22; Konstantakopoulos, op. cit. p. 96 Regarding this conditional impediment a provision was made in 1834, which, however, according to Mellissinos Christodoulou, op.cit. p. 29, was never implemented.
 - 6) E. Mantzouneas, op. cit. I p. 139
 - 7) Vassilaki, ibid. p. 22; Panayotakos, ibid. p. 138
 - 8) ibid. p. 138; Konstantakopoulos, ibid. p. 96

3. Seasons of prohibition. In accordance with an early tradition of the Church there are certain sacred seasons during the ecclesiastical year which the Church has ruled as periods of prohibition for the contracting of marriages⁽¹⁾. This tradition goes back to the fourth century when the Council of Laodicea (350) had forbidden the celebration of marriages during Lent⁽²⁾. The civil legislation makes no pronouncement regarding these prohibitions, which, however, as a rule are respected and observed by the people⁽³⁾.

Such periods of prohibition according to the Greek Orthodox Church are :

- 1) The forty days of the Great Lent, including a week after Easter;
- 2) the period of Advent, or Lent for Christmas i.e. from 12 December to the 6 January;
- 3) the period of Lent from 1 to 15 August which the Orthodox Church observes in honour of the feast of Dormition of our Lady on 15 August;
- 4) the 29 August which is the feast day of St. John the Baptist;
- 5) the 14 September which is the feast day of the Exaltation of the Holy Cross (4).

However, on certain occasions of urgency, a special dispensation may be granted at the discretion of the Bishop for a marriage to take place during some of these periods of prohibition, but on the condition that the ceremony will take place under closed doors, with no other people attending except the closest relatives, and that no celebration (reception) will follow the marriage⁽⁵⁾.

1) Panayotakos, ibid. p. 145; Konstantakopoulos, ibid. p. 93

2) Canon 52, Alivisatos, op. cit. p. 145

3) Panayotakos, ibid. p. 145; Konstantakopoulos, ibid. p. 93

4) Konstantakopoulos, ibid. p. 94 5) ibid. p. 94

e. Conditions which refer to the final and essential formalities of contracting a marriage

1. Banns. It seems that the 1940 Civil Code was first to introduce the regulation of giving banns before marriage⁽¹⁾. At least one week before the celebration of marriage the priest of the Parish where the couple reside is obliged to give the banns after the celebration of liturgy⁽²⁾. If the couple reside in different Parishes banns are to be given in both Churches, but the licence is given for the woman's Parish, without this being a strict rule⁽³⁾. The publication of banns includes the names, profession, the civil status of the couple, their parents' names and the place where the marriage will be celebrated. If the marriage does not take place within six months, the validity of banns expires and it should be renewed by being repeated⁽⁴⁾. In big cities and important places banns are published in the local press⁽⁵⁾. However, for serious reasons, publication of banns may be omitted at the discretion of the Bishop⁽⁶⁾.

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- 1) P. Panayotakos, On the Impediments, op. cit. p. 143; Zhishman referring to this point states that in the Eastern Orthodox Church it was not customary to give banns (op. cit. vol. II, p. 671), also Melissinos Christodoulou in his Treatise on the Impediments to Marriage, op. cit. p. 34f apart from the requirement of the Bishop's licence does not mention banns. He simply considers responsible the priest concerned to make the proper search and be sure that there are no impediments before he applies for the Bishop's licence.
- 2) Article 1369 para. 1, Alivisatos, ibid. p. 724
- 3) Panayotakos, ibid. pp. 141ff; Ephimerios, Pastoral Magazine, Supplement of the official bi-weekly Church review Ekklesia of the Church of Greece, 1-31 December 1953 pp. 601-602.
- 4) Article 1369 paras 1-2, Alivisatos, ibid. pp. 724-725
- 5) Article 1369 para 2, ibid. p. 725
- 6) Article 1370 ibid. p. 725; Ephimerios, op. cit. pp. 601-602

2. Bishop's licence. Since the early times of the Church those who wished to contract a Christian marriage had to refer to their proper Church authority,

" so that their union would be with the knowledge of the Bishop and their marriage may be according to the will of God and not according to the dictates of human desire"(1).

Accordingly the authorisation of the Bishop for the validity of a marriage was made an important condition also for the Byzantine legislation⁽²⁾. Preserving this right of the Byzantine law the Church of Greece in the Encyclical letters of the Holy Synod on 31 March 1834 and of 2 April 1835 declared null any marriage celebrated without the Bishop's licence⁽³⁾. This rule remained in force until a decree was enacted in 1924 which decreed that the Bishop's licence or authorisation was not a condition for the validity of a marriage⁽⁴⁾.

Similarly the 1940 Civil Code declared that for the celebration of a marriage the written authorisation of the Bishop or of his delegate is required, however, a marriage celebrated without such permission remains valid, as long as no other impediment exists⁽⁵⁾. The priest who celebrates a marriage without the Bishop's licence is liable, apart from the canonical ecclesiastical sanctions, also with imprisonment, varying from six months to one year, pronounced by the correctional tribunal⁽⁶⁾.

1) Ignatius, Ad Polycarp 5, 2 P.G. 5, 718
2) Ralli & Potli, op. cit. vol. V pp. 280-281
3) St. Giannopoulos, op. cit. pp. 454 & 458
4) Article 2 para. 5 of Act 3222/1924 in P. Panayotakos, Civil Code and the Church on Marriage, op. cit. p. 67

The reason for the authorisation or the Bishop's licence is purely disciplinary, to control the priest that he has done the proper search⁽¹⁾. Priests who are neglecting the formalities required by the civil law are also liable to suspension which could last up to three years⁽²⁾. It should be noted also that the law provides the Bishop with the right to refuse authorisation if conditions are not satisfactory⁽³⁾.

From what has already been expounded it results that when the celebrant priest is a canonically ordained priest of the Orthodox Church, who has authority from his Bishop to be in the active service of the Church (ἐν ἐνεργείᾳ) and if all the other conditions required by both the civil and ecclesiastical legislation for the validity of a marriage are satisfactory, only then he may proceed in celebrating the liturgical or sacramental rite of marriage, without which, and in the terms of the Civil Code itself, the marriage is totally inexistent⁽⁴⁾.

5) Article 1368 of the Civil Code, Alivisatos, op. cit. p. 724

6) Article 51 of the Constitutional Law of the Greek Church 1923, ibid. p. 562

1) Article 1370 of the Civil Code, Alivisatos, ibid. p. 725

2) Article 50 of the Constitutional Law of the Greek Church ibid. p. 562

3) Article 1370, ibid. p. 725

4) Article 1367 ibid. p. 724

3. The Liturgical rite of marriage in the Greek
Orthodox Church^(*)

It has already been mentioned in the General Introduction and elsewhere⁽¹⁾ that as early as the beginning of the second century A.D. St. Ignatius, Bishop of Antioch counselled Christian couples that they must receive the Bishop's consent for their marriage⁽²⁾. Gradually this consent no doubt included a blessing of some kind. A Christian couple, after entering a civil marriage, partook of the Eucharist, and this Communion, according to Tertullian as well as other early Fathers, was the seal of marriage⁽³⁾, implying all the Christian responsibilities⁽⁴⁾.

Clement of Alexandria states that in contrast to pagan and perhaps Jewish special rites for marriage, Christians had no special rites, but they were just cleansed for marriage by conversion, repentance, baptism and Holy Communion. A marriage was according to him endowed with special blessings from the Logos when submitted to God in sincerity of heart and fullness of faith⁽⁵⁾.

Yet special blessings and the presence of the Bishop or priest continued more and more to prevail

(*) For the liturgical structure of the rite and the service of marriage presently used see Appendix II pp.

1) see pp. 23ff and 204

2) Ignatius Ad Polycarp 5, 2 P.G. 5, 718

3) Tertullian Ad Uxorem 11, 9 P.L. 1, 1302

4) For the opinions of other early Fathers see pp. 31ff, 38f43f

5) Clement of Alexandria Stromateis 3, 12 P.G. 8, 1180A

during the following centuries for several reasons :

- i) the precedent of God's blessing of Adam and Eve;
- ii) added liturgical defense of marriage against heretics who repudiated this institution as sinful;
- iii) the communal character of the Church requiring the pastoral care of the Bishop;
- iv) the personal relationships between Bishops or priests and couples who were taught by them or were raised under their care, as for example orphans; and
- v) not the least the honour of having a Bishop or priest at a marriage(1).

In the fourth century a specific solemnisation of the Sacrament is mentioned by some of the eastern Christian writers : a rite of Crowning performed during the eucharistic liturgy⁽²⁾. According to St. John Chrysostom, the crowns symbolised victory over passions, for Christian marriage was not concluded "according to the flesh"⁽³⁾. From a letter of St. Theodore Studite (826) we learn that crowning was accompanied by a brief prayer read "before the whole congregation" at the Sunday liturgy by the Bishop or the priest⁽⁴⁾.

Eventually, for all the aforementioned reasons and the powerful ecclesial impulse to embrace all important moments of life in the liturgical cycle of the Church, special blessings for a marriage became predominant from the sixth to the ninth centuries when imperial

1) Theodore Stylianopoulos, "Toward A Theology of Marriage in the Orthodox Church", The Greek Orthodox Theological Review, vol. XXII, 1977, No 3 p. 273

2) P. Trembelas The Small Euchologion (The Short Prayer Book) (in Greek) vol. I p. 15

3) St. John Chrysostom, Homily 9 on I Timothy, P.G. 62, 546

4) Letters L, 22 P.G. 99, 973

state legislation tended to grant the Church a certain recognition⁽¹⁾. The well known legal collection, known as Epanagoge (884) describing the relations between Church and State at that time, offers to Christians three alternatives for concluding marriage : " Marriage, it says, is an alliance between husband and wife and their union is for life; it is accomplished by a blessing, or by a crowning, or by an agreement"(2). So, until the ninth century the Church did not know of any rite of marriage separate from the eucharistic liturgy⁽³⁾; but whether crowning or simply a blessing it was not yet made a legal obligation. The decisive step in this direction was taken at the beginning of the tenth century and from that time a new rite of crowning was developed, separate from the eucharist. This was necessary because as soon as the sacrament of marriage -received in the Church- became legally obligatory, compromises of all sorts became unavoidable⁽⁴⁾.

The Byzantine Emperor Leo VI (886-912) was the first to express regrets that in previous imperial legislation the two legal acts i.e. of adoption of a child and of marriage, were considered as purely civil formalities, and he declared that both of these acts,

1) Zhishman, op. cit. vol. I pp. 31ff; Justinian's Novels 7, 123, 133, 103; Leo VI Novel 89; Alexius Comnenus Novel 35; P. Fanayotakos, On the Impediments, op. cit. p. 149f Armenopoulos' Hexabiblos, op. cit. IV 4, 19 p. 228

2) Epanagoge XVI, 1 see Zhishman, op. cit. vol. I pp. 109ff

3) P. Trembelas, op. cit. pp. 16-17

4) J. Meyendorff, op. cit. pp. 27-30

as long as they involve free citizens and not slaves, should be sanctioned by a Church ceremony, and that a marriage not blessed in Church "will not be considered as marriage but as an illegitimate concubinage"⁽¹⁾.

The most important implication of this decree was that whilst the Church was invested with the responsibility of giving legal status to marriage, at the same time she had to pay a high price for the new social responsibility she had assumed. She had to secularise her pastoral attitude towards marriage, and practically abandon her penitential discipline, because until then a citizen could enter a marriage disapproved by the Church and do so legally. If he was a Christian, his action incurred a period of penitence or excommunication, but he remained in good standing before the law⁽²⁾.

After Leo VI, the Church had to determine the legal status of all marriages, even those which contradicted Christian norms. Of course the new situation, in principle, gave the appearance that the Church had an upper hand over the morals of all citizens; but in practice, since these citizens were not all saints, the Church was obliged⁽³⁾ not only to bless marriages, which she did not approve, but even to dissolve them for reasons other than those which she reluctantly was accepting. Emperor Leo VI himself, the author of the decree, forced upon the Church

1) Leo VI Novel 89, Zhishman op. cit. vol. I pp. 32ff
Armenopoulos' Hexabiblos IV 4, 19, op. cit. p. 228

2) Meyendorff ibid. p. 29

3) ibid. p. 29

his own fourth marriage in 906⁽¹⁾. So the distinction between marriage as a contract and marriage as a sacrament, between fallen human society and the Kingdom of God, between secular and sacred was partially obliterated⁽²⁾. The only compromise which the Church could not accept was to offend the holiness of the Eucharist; she could not, for example, give communion to a non-orthodox, or to a couple entering a prohibited marriage. Thus she had to develop a rite of marriage separate from the Eucharist. It was then from the ninth century on that the marriage rite as a separate crowning service, as we know it to-day began to develop towards its present form, which still bears the marks of the original and normal link between marriage and the Eucharist⁽³⁾.

In the Greek Orthodox tradition, therefore, there are two types of marriage rite : an old one, which is rather brief and a later one, which is more elaborate and extensive⁽⁴⁾. The former derives from the Patristic era, and the later was developed after the ninth century⁽⁵⁾. The order of marriage which is used to-day in the Greek Orthodox Church is a combination of these two types⁽⁶⁾.

1) Vlasiou Fidas, op. cit. vol. II pp. 73-77 see note 1 p. 192

2) Meyendorff, ibid. p. 29

3) P. Trembelas, op. cit. p. 15

4) ibid. p. 15

5) P. Trembelas calls the later type South-Italian because, in his opinion, when the first Euchologia (Prayer-Books) were printed (in Greek) in Venice, it must have been obvious that south-Italian manuscripts of the flourishing there at the time Greek Orthodox communities, were also taken into account. Ibid. p. 15

6) According to Trembelas the present rite was developed in the 12th century and took its final form in the 15th century, when the first printed Greek Euchologia appeared in Venice.

3. The Ecclesiastical and Civil legislation of Nullity in Greece since 1850

The law of nullity which was in force in Greece during and after 1850 was part of the Byzantine legislation which distinguished marriages into those which were lawful and legal or those which were unlawful and illegal⁽¹⁾.

The lawful and legal marriages were those which complied fully with the conditions and requirements of both the civil and ecclesiastical legislation, whereas the unlawful and illegal ones were those contracted despite the existence of some impediment, which, had it been known, the Church would not have blessed the union nor the State would have allowed it to take place⁽²⁾. Nevertheless such marriages, though in appearance seemed to have had the effects of a true one, yet they could not be considered as true unions, even if the liturgical rite had taken place, because a prerequisite for a valid marriage was a lawful and legitimate association⁽³⁾. Therefore, if the liturgical rite was performed for such an unlawful union, that illegitimate association was

1) Armenopoulos' Hexabiblos IV 7, 1 pp. 231ff

2) Zhishman, op. cit. vol. II p. 691

3) ibid. p. 691

considered as mitigating the sacramental character of marriage⁽¹⁾.

Furthermore according to the Byzantine legislation which was introduced in Greece, it seems that there was no distinction between void and voidable marriages. Marriage unions were considered either lawful and valid or unlawful and void⁽²⁾. Because in fact a voidable marriage was nothing else but a void one with the possibility of becoming valid in certain cases, such as :

- a) after the completion of certain conditions which were lacking i.e. proper age, cure of impotence, or when consent was given later;
- b) after the removal of certain impediments, such as in the case of guardianship when it was legally relinquished, and in the case of difference of religion when the non-christian party had joined the Orthodox Church⁽³⁾.

As long as such marriages were contracted despite an explicit prohibition because of a certain impediment they were considered as unlawful and void⁽⁴⁾.

Such prohibited marriages were classified into the following three groups :

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- 1) Zhishman, op. cit. vol. II p. 691
 - 2) ibid. pp. 694-697
 - 3) ibid. pp. 694ff
 - 4) ibid. vol. I p. 391

- 1) those which were known as illegal because they violated a prohibition of the civil legislation (nuptiae nefariae); (νεφάρτος ἢ παράνομος),
- 2) those which were condemned because they violated a sacred promise or vow, (nuptiae damnatae), (δαμνάτος ἢ κατάρτιος),
- 3) those which were known as incestuous because they violated a prohibition regarding consanguinity, or affinity or one of the other spiritual relationships (nuptiae incestae), (ἕνεστος ἢ ἀθέμιτος) (1).

In accordance with the above regulations the law of nullity which was introduced in Greece recognised the following grounds which rendered a marriage null and void :

1. lack of proper age;
2. lack of true consent due to duress or mistake or abduction;
3. lack of parental consent or of those in control of a minor;
4. prohibited degrees of consanguinity or affinity;
5. relationship through baptism, adoption or guardianship;
6. adultery;
7. an already existing marriage;
8. three past marriages;
9. Holy Orders and vows of chastity;
10. difference of religion;
11. lack of the Bishop's licence;
12. lack of the proper liturgical rite (2).

1) Armenopoulos' Hexabiblos IV 8, 11 op. cit. p. 241; Zhishman, op. cit. vol. I pp. 392ff

2) ibid. vol. II pp. 694-697; Gregory Kassimati, Treatise of Family Law (in Greek) Athens, 1939 pp. 121ff

The development of the law regarding each of these grounds separately has already been treated in the previous chapter⁽¹⁾ with the various amendments which, in the course of time, were made until the 1940 Civil Code was introduced in Greece, which made a clearer distinction between void and voidable marriages⁽²⁾.

It should also be mentioned here that according to the Byzantine legislation the results of pronouncing a marriage null were the following :

- 1) The children of such unions were considered illegitimate and had no legal rights⁽³⁾;
- 2) both man and woman were subject to punishment or heavy fine, and the man was dismissed in disgrace from his job⁽⁴⁾;
- 3) illegitimate children were barred to enter Holy Orders⁽⁵⁾;
- 4) the priest who blessed a void marriage was liable to ecclesiastical discipline varying from suspension for a period of time to even being defrocked, according to his responsibility⁽⁶⁾.

1) Part II chapter 2 pp. 163ff
2) Articles 1372-1385 of the 1940 Civil Code in Alivisatos op. cit. pp. 725-727
3) Armenopoulos' Hexabiblos IV 7,8 op. cit. p. 232
4) ibid. IV 7,7 p. 232
5) Zhishman ibid. vol. II p. 700
6) ibid. p. 705

However the application of these regulations in Greece became more lenient. As early as 1865, though no new legislation was enacted the father of illegitimate children was obliged to maintain them without discrimination whether they were legitimate or not⁽¹⁾. On the other hand the Church following the 33 canon of the Council of Troullo (692) did not inquire about the origin of any candidate for Holy Orders, but only whether he was an able and devout person⁽²⁾. With regard to the lack of the Bishop's licence an Encyclical of the Greek Church in 1835 declared that any marriage which was contracted without it was to be null⁽³⁾. In 1849 a law was enacted to the same effect⁽⁴⁾ and a similar law was repeated in 1883⁽⁵⁾. In the course of time, however, the effect of this law was lost and in 1924 it was repealed⁽⁶⁾. Since then the lack of the Bishop's licence does not invalidate the marriage if there is no other impediment, but the celebrant priest is liable not only to ecclesiastical discipline⁽⁷⁾, but also to civil sanctions, which could carry imprisonment of six months to a year⁽⁸⁾. Also regarding the legitimacy of children born of null marriages a law was enacted in 1926 recognising the offsprings of such unions as legitimate and this is in force since then⁽⁹⁾.

1) Zhishman, op.cit. vol. II pp. 746-747

2) ibid. p. 701-704

3) Encyclical 2/4/1835, Giannakopoulos, op. cit. pp. 454ff

4) ibid. pp. 458ff

5) ibid. pp. 460ff

6) Panayotakos, On the Impediments, op. cit. p. 143

7) Article 68 of the Constitutional Law of the Greek Church 31/12/1923 in Alivisatos, op. cit. p. 531

8) ibid. p. 531

9) Article 6 of the 14/17 July 1926 Act, Kassimatis, op.cit. p.121

In accordance with the 1940 Civil Code a void marriage is that contracted in violation of the appropriate conditions and impediments for a valid marriage.⁽¹⁾ These conditions and impediments are specified in the present Civil Code as follows :

- 1) Lack of proper age, if the man is under eighteen years of age and/or the woman under fourteen (2);
- 2) lack of mutual consent which should be given in person and without any condition or qualification (3);
- 3) if a person is legally deprived of his/her civil rights or pronounced as incompetent (4);
- 4) lack of parental consent or of the adoptive parent, if one of the parties is under 21 years old (5);
- 5) difference of religion (6);
- 6) prior existing marriage (7);
- 7) fourth consecutive marriage (8);
- 8) consanguinity up to the fourth degree (9);
- 9) affinity up to the third degree (10);
- 10) affinity between relatives from both sides of a marriage up to the fourth degree (11);
- 11) relationship through adoption; if marriage was contracted between the adopted and the adoptive parent or his/her descendents (12);
- 12) relationship through baptism; if marriage was contracted the sponsor and the god-child or his/her mother or father (13);

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- 1) Article 1372 of the 1940 Civil Code, Alivisatos op.cit.p.725
 - 2) Article 1350 ibid. p. 722
 - 3) Article 1350 para. 2, ibid. p. 723
 - 4) Article 1351, ibid. p. 723
 - 5) Article 1352, ibid. p. 723
 - 6) Article 1353, ibid. p. 723 and Article 1366, ibid. p. 724
 - 7) Article 1354, ibid. p. 723
 - 8) Article 1355, ibid. p. 723
 - 9) Articles 1356 and 1359, ibid. p. 723
 - 10) Article 1357, ibid. p. 723
 - 11) Article 1358, ibid. p. 723
 - 12) Article 1360, ibid. p. 723
 - 13) Article 1361, ibid. p. 724

- 13) relationship through guardianship; if the guardian marries the ward of court before the authority of guardianship was legally relinquished (1);
- 14) if the parties were found guilty of adultery before contracting the marriage by a court's decision (2);
- 15) if the man at the time of marriage was in Holy Orders or under vows of chastity (3).

For members of the Eastern Orthodox Church, according to the 1940 Civil Code, marriage is inexistent (ἀνυπόστατος) if the sacramental form of marriage was not in accordance with the rite of the Eastern Orthodox Church, conducted by a canonical priest of the same Church⁽⁴⁾. The same condition also applies in the case of a marriage between a member of the Greek Orthodox Church and a member of another Christian denomination⁽⁵⁾. For members of different religion or denomination if the sacramental form of marriage was not observed, in accordance with their respective religious rite, again such marriage is considered as inexistent⁽⁶⁾.

Of the aforementioned cases, nullity could be avoided on the following conditions :

- 1) In the case of a minor, when the joint life has continued over the proper age (7);
- 2) in the case of lack of consent, if full and free consent has followed (8);
- 3) in the case of legal or natural incompetence if the legal deprivation has been lifted or the person has been cured (9);

1) Article 1362, Alivisatos, ibid. p. 724
2) Article 1363, ibid. p. 724
3) Article 1364, ibid. p. 724
4) Article 1367, ibid. p. 724
5) Article 1367, ibid. p. 724
6) Article 1371, ibid. p. 725
7) Article 1373, ibid. p. 725
8) Article 1373, ibid. p. 725
9) Article 1373, ibid. p. 725

- 4) if the parents or the adoptive have approved eventually the marriage of the minor and have given their consent which at first they refused (1);
- 5) after the authority of guardianship has been relinquished⁽²⁾.

However the 1940 Civil Code refers only to two cases as voidable marriages, namely those which result from :

- a) error or mistake regarding the identity of the other party to the marriage (3), and
- b) threats and menaces⁽⁴⁾.

According to the interpretation given in the first instance, error or mistake regarding the identity of a person refers to the person itself and not to the social or financial status⁽⁵⁾ and it could result from the acquaintance of the couple through photographs, the twin brother or sister or through false documents of identity⁽⁶⁾.

The second case referred to in the Civil Code as a voidable marriage is when threats and menaces are used to create fear and put in danger the life, freedom, honour or the fortune of the threatened person or of his/her close friends and relatives⁽⁷⁾. However, fear of parental dissatisfaction is not a ground for nullity⁽⁸⁾. If a priest is threatened because he refused to bless a marriage, when there is a ground for nullity, then the marriage is null for that reason; but if he is threatened

1) Article 1373, Alivisatos, ibid. p. 725

2) Article 1373, ibid. p. 725

3) Article 1374, ibid. p. 725

4) Article 1375, ibid. pp. 725-726

5) G.L. Roylos, Family Law (in Greek), Athens, 1952 p. 239

6) H. Vassilaki, op. cit. p. 29

7) G.L. Roylos, op. cit. pp. 248ff

8) ibid. p. 252

because he unreasonably refused to solemnise it, then the marriage is valid⁽¹⁾.

In both cases of voidable marriages the grounds could be waived :

- a) if the mistaken party consents later to the marriage;(2)
- b) if the person threatened freely consented and approved afterwards of the contracted marriage;(3) or
- c) if no action has been taken within three years since the marriage was contracted (4).

For the declaration of nullity of a marriage a court's decision is necessary⁽⁵⁾. For this reason, those who have the right to take an action are :

- 1) the Attorney general ex officio in all the cases mentioned here, except in the case of the ward of court;⁽⁶⁾
- 2) the husband (7);
- 3) the wife⁽⁸⁾;
- 4) any third person who may have a legal interest⁽⁹⁾;
- 5) in the case of guardianship only the ward of court⁽¹⁰⁾;
- 6) in the case of voidable marriages (mistake or threats) exclusively the victim of error or threat and no other person (11).

Only in the case of questioning the validity of the sacramental rite, then the Church has the exclusive right to make a pronouncement⁽¹²⁾.

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- 1) Roylos, op. cit. p. 247
 - 2) Article 1374, Alivisatos, op. cit. p.725
 - 3) Article 1375 para. 2, ibid. p. 726
 - 4) Article 1380 para. 2, ibid. p. 726
 - 5) Article 1376, ibid. p. 726 and Article 1377, ibid. p. 726
 - 6) Article 1378, ibid. p. 726
 - 7) Article 1378, ibid. p. 726
 - 8) Article 1378, ibid. p. 726
 - 9) Article 1378, ibid. p. 726
 - 10) Article 1378, ibid. p. 726
 - 11) Article 1378, ibid. p. 726
 - 12) Article 54 of the Constitutional Law of the Greek Church, ibid. p. 563

The court's decision is irrevocable and retroactive, abolishing all the effects of the marriage since it was contracted⁽¹⁾. However, until the pronouncement of the court's decision, it appears as having all the effects of a true marriage union⁽²⁾. The children born of an annulled marriage are recognised as legitimate, even if they are born from consanguinity within the prohibited degrees⁽³⁾.

Financial compensations are awarded to the party who in good faith was ignorant of the grounds of nullity; and to a party threatened. Similar claims could be made by the same parties if a void or voidable marriage was dissolved by death⁽⁴⁾. Finally, the Civil Code makes a provision that the annulment of a marriage does not harm the interest and any right of third persons who, in good faith, were dealing with either of the parties⁽⁵⁾.

In conclusion it must be stressed that the 1940 Civil Code recognises only one way of pronouncing a decree of nullity and that is by a court's decision.⁽⁶⁾ Once such a decision has been pronounced the Church authority without any further formality is obliged to pronounce a similar decree of spiritual annulment.

1) Article 1381, Alivisatos op. cit. p. 726

2) Vassilakis, op. cit. p. 32

3) Article 1382, Alivisatos, ibid. p. 726

4) Articles 1383 and 1384, ibid. p. 726

5) Article 1385, ibid. p. 727

6) Roylos, op. cit. pp. 556-557; Article 55 of the Act 671 1943, Alivisatos, ibid. pp. 563-564

4. The Law of Divorce in Greece between 1850 - 1950

By the beginning of the period under consideration, jurisdiction over matters relating to divorce had developed in Greece almost in a similar way as the case happened in England in 1857⁽¹⁾. Soon after the establishment of the new kingdom of Greece in 1832⁽²⁾ by Royal decrees of 1833 and 1835⁽³⁾, which were reaffirmed in 1852⁽⁴⁾, it was declared that all matters relating to divorce were transferred from the Church authorities to the civil courts. However, apart from the recognition by this civil legislation of the sacramental rite of the Church as the essential factor for a valid marriage, and the right given to her regarding the formalities for a marriage, the Church was also given some shadow jurisdiction in matters related to divorce⁽⁵⁾. Accordingly, before any divorce proceedings took place in the court, the Church was left with the responsibility to attempt a reconciliation between the disputing parties. Failure of such an attempt, after a period of three months, gave the right to a petitioner to bring again the matter to the court which only then proceeded with the hearing of the case⁽⁶⁾.

1) cf Part I chapter 4 pp. 95ff

2) cf Part II chapter 1 pp. 152ff

3) Royal decrees of 23 July 1833 and 23 February 1835
cf note 1 p.152

4) 9 July 1852 Constitutional Law of the Autocephalous Church of Greece cf note 1 p. 160, Alivisatos, op. cit. pp. 494ff

5) Maridakis, op. cit. p. 149 *

6) 1852 Constitutional Law, Article.17, Alivisatos, ibid. p.501

* This Lutheran practice may have been due to early Lutheran influences (cf. p. 153).

Furthermore, it was declared that, following the court's decision pronouncing the dissolution of marriage, the Church was also obliged to pronounce its spiritual dissolution⁽¹⁾. These provisions regarding the jurisdiction of the civil courts and the rights and responsibilities of the church remained in force in Greece throughout this period and continue to regulate all matters relating to divorce till the present time.

With regard to the development of the law of divorce in Greece, during the period under consideration, it seems that it has gone through three different stages. The first one went up to 1920 because it was then that for the first time a new Divorce Act⁽²⁾ was passed in order to update the legislation which was in force till then⁽³⁾; the second stage went from 1920 until the 1940 new Civil Code of Greece appeared, which revised and codified the previous legislation, consequently that on divorce as well⁽⁴⁾, and so marked the beginning of the third stage in the developments of the divorce law.

During the first period the grounds for divorce were distinguished into two groups : those which led to divorce with penalties for the guilty party, and those which led to divorce without any penalty⁽⁵⁾.

1) Article 17 of the 1852 Constitutional Law of the Autocephalous Church of Greece cf Alivisatos, op. cit. p. 502

2) Act 2228 of 1920 cf. Maridakis, op. cit. pp. 9ff

3) ibid. p. 3; K. Triantafyllopoulos, The new Law about Divorce, Athens, 1921 pp. 16ff

4) The Civil Code, edited by the Law Society, Athens, 1979; part four of the 1940 Civil Code on Family Law included in H. Alivisatos, Holy Canons, op. cit. pp. 722- 731

5) Zhishman, op. cit. vol. II pp. 755-801

The grounds of the first group were the following :

1. Adultery⁽¹⁾. This ground was based on the evidence of our Lord's sayings in St. Matthew's gospel⁽²⁾ and also on the concept of the Church that the end of marriage is not only natural death, but there is also moral death through unfaithfulness which could produce the same result⁽³⁾. It seems that on no other ground for divorce there is so much and complete agreement between the Fathers of the Church and the pronouncements of the Byzantine legislation as in the case of adultery⁽⁴⁾. The penalties for this offence were at first excommunication and life confinement to a monastery⁽⁵⁾ for the adulteress which was later reduced to five and then two years, also both parties were barred from Holy Communion for seven years⁽⁶⁾. But the law was not treating both sexes equally. The husband could divorce his wife not only on the ground of adultery, but also on grounds which merely gave him suspicions of adultery on her part, i.e. if she feasted with other men without her husband's knowledge and consent, or frequented the baths with them or if she passed the night away from her husband's house without due reason and against his will, except it was the house of her own parents⁽⁷⁾. The wife, however,

1) Armenopoulos' Hexabiblos IV 7,28 op. cit. p. 236

2) Matth. 5,32 & 19, 3-9

3) Zhishman, op. cit. vol. II p. 760

4) ibid. p. 761

5) ibid. pp. 770ff; Armenopoulos' Hexabiblos, VI2,16-19 op. cit. pp. 346-347

6) ibid. IV 7, 28 commentary p. 236

7) ibid. IV 15, 13 pp. 272-273

did not have the same right for a divorce on the same grounds of suspicion. In connection with this the only opportunity a wife had was, if the husband accused her of adultery and failed to substantiate the charge; also if he lived in notorious concubinage with another woman⁽¹⁾. As regards the penalties of this offence it seems that they were not always strictly observed and as the time passed they became more lax⁽²⁾.

2. Plot against the life of the other party⁽³⁾. This was made a ground for divorce ~~simply~~ because it put in danger the life of the innocent party and if divorce was not allowed the future married life would be unsafe⁽⁴⁾. Threats against the other party's life was not a ground for divorce but only plot, which according to the Criminal law was punished by imprisonment and from the part of the Church the penalty was excommunication⁽⁵⁾.

3. Abortion⁽⁶⁾. In the Byzantine legislation it was considered as a crime equal to murder and so was also treated by the Church. It was punished with life imprisonment and excommunication, which later was reduced to ten years⁽⁷⁾ and eventually the period of penance was regulated by the father confessor.

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- 1) Armenopoulos' Hexabiblos IV 15,14 op. cit. pp.274-275
 - 2) Zhishman op. cit. vol. II pp. 844ff
 - 3) Hexabiblos, op. cit. IV 15,15 pp. 274f
 - 4) ibid. IV 15, 13 pp. 272ff
 - 5) Zhishman, ibid. p. 758 and pp. 843-844
 - 6) Hexabiblos, op. cit. IV 15, 6 p. 271
 - 7) Zhishman, ibid. p. 793f

4. Sponsorship of own children⁽¹⁾. This was not only an impediment to marriage but it could also become a ground for divorce if one of the parents acted as god-parent for their own child. It seems that this pronouncement became a loophole for people who wanted to dissolve their marriage, and in order to prevent this abuse heavy penalties were decreed against those guilty who were also forbidden to contract a new marriage⁽²⁾.

The grounds of the second group which led to divorce with no penalty were :

1. Physical incapacity⁽³⁾ which lasted for over three years since the marriage, i.e. it existed before the marriage and was unknown to the plaintiff. If physical incapacity was developed after the marriage, it could not constitute a ground for divorce because, according to the Byzantine legislation, in either case the essential factor for a valid marriage was not consummation but mutual consent⁽⁴⁾. Accordingly the spouses were obliged, in the latter case to bear patiently the misfortune⁽⁵⁾.

2. Desertion⁽⁶⁾ If a husband deserted his wife for over seven years without caring or writing to her she had the right to divorce him⁽⁷⁾. If she had confirmed evidence

1) Canon 53 of the Council of Troullo, Alivisatos, op. cit. p. 99; Zhishman, op. cit. vol. II pp. 799ff

2) ibid. p. 300

3) Maridakis, op. cit. p. 79; Hexabiblos, op. cit. IV 15,2 op.cit. p. 270

4) ibid. IV 4, 19 p. 228

5) Zhishman, ibid. p. 304

6) ibid. p. 308

7) ibid. pp. 861ff

of his death at an earlier time still she had to wait for a further year (mourning year) as a widow before she could contract a new marriage⁽¹⁾. If the husband was away serving in the army and the wife had no news from him, she could not divorce him on this ground and marry again, unless she has confirmation from the proper army authorities of his death, but still she had to observe the mourning year⁽²⁾.

3. Mania⁽³⁾ was made a ground for divorce not only for the risk of the innocent party, but also for the benefit of the children and the society. But the husband had to bear the misfortune for three years before applying for a divorce, whilst the wife, if she was the healthy party, had to bear the misfortune for five years⁽⁴⁾.

4. Difference or change of religion⁽⁵⁾. The first part of this ground was based on St. Paul's teaching⁽⁶⁾ that the Christian partner sanctifies the non-christian, but if the unfaithful obstructs the Christian spouse in his or her religious duties, then it is better to dissolve the marriage⁽⁷⁾. Similarly if both spouses were faithful Christians and after the marriage one of them was converted to another religion, this change of religion gave the

1) Armenopoulos' Hexabiblos IV 7, 32, op. cit. p. 237

2) ibid. IV 15, 16 p. 276; Zhishman op. cit. vol. II pp. 810, 860-864.

3) Hexabiblos IV 15, 5 op. cit. p. 271

4) Hexabiblos IV 1, 15, ibid. p. 220; Zhishman, ibid. pp.864ff

5) Zhishman, ibid. pp. 795ff

6) I Corinthians 7, 12-17

7) Zhishman, ibid. pp. 797ff

right to the faithful partner to apply on this ground for the dissolution of the marriage⁽¹⁾.

5. Monastic life and vows of chastity⁽²⁾. In accordance with the precept that complete dedication to God is the ultimate goal of Christian perfection, the Orthodox Church has always maintained that entry into monastic life or taking vows of chastity is one's complete dedication to God and His praise. Consequently, entry into a monastery or vows of chastity have been considered as a departure from this world and a complete indifference to worldly cares.⁽³⁾ Therefore if either of the spouses wished to join this kind of life this was considered as a ground for the dissolution of marriage. But in this case two requirements were necessary a) the consent of the other party and b) the choice of this kind of life to have been made freely and without any pressure or force having been used⁽⁴⁾.

6. Refusal of the wife to follow her husband⁽⁵⁾ in order to live and establish the matrimonial home in another place. This ground was established such refusal of the wife implies a denial of one of the aims of marriage i.e. the association for the whole life 'in which the two share the same civil and religious rights'⁽⁶⁾.

1) Zhishman, op. cit. vol. II pp. 858-859

2) Armenopoulos' Hexabiblos, IV.15,11 op. cit. p. 272

3) Zhishman, ibid. p. 825

4) ibid. pp. 826ff

5) ibid. p. 880

6) see p. 25 for the whole definition of marriage.

These were the grounds for divorce which as part of the Byzantine legislation were introduced and applied in Greece during the first part of this period⁽¹⁾. But soon it became evident that this legislation was out of date. Besides the unequal treatment of the sexes there were some instances which were unacceptable any more as grounds for divorce, whereas, on the other hand, there were cases unforeseen and not included in the previous legislation which very often led those concerned to divorce by mutual consent in order to comply with one of its grounds⁽²⁾.

The need for a change and to bring the law up to date was accomplished by an Act of 1920 in which an attempt was made to cover almost all of the possible cases in which a divorce was to be allowed⁽³⁾. A precise and detailed enumeration of all the grounds for divorce was not possible, but what this law tried to do was to draw the limits within which a judge could move for pronouncing his verdict in a particular case. The truth about a fact which established a ground for divorce had to be proved and the court's decision was irrevocable⁽⁴⁾.

1) Maridakis, op. cit. p. 3

2) ibid. p. 3

3) Act 2228 of June 1920, cf K. Triantafyllopoulos, The 2228 Act, Athens, 1920 p. 16

4) ibid. pp. 166ff; Maridakis, ibid. p. 12

The grounds for divorce according to the new legislation of 1920 were divided into two groups :

I) The absolute grounds which once proved the divorce was to be pronounced without any delay, and such cases were : adultery, bigamy, plot against the other partner's life and malicious desertion.

II) The relative grounds i.e. insanity, physical incapacity, leprosy and any other incident which undermined so deeply the relationship between husband and wife that it made it intolerable for them to go on living together, as long as these grounds continue to exist⁽¹⁾.

The absolute grounds which the new Act included were the following :

1. Adultery. It is worth mentioning here that while the Committee which worked out the draft⁽²⁾ for the 2228 Act of 1920 suggested the equality of both sexes as far as the present ground was concerned, yet the Bill was passed with some concessions in favour of the husband, as it is apparent from the second clause of Article 2 which states as follows :

" whenever the ground for divorce is adultery on the part of the husband the court could dismiss the wife's petition on the ground of important reasons"⁽³⁾.

1) Maridakis, op. cit. p. 21

2) K. Triantafyllopoulos, Report and Draft of the Law on the Grounds for Divorce and some of its consequences, Athens 1918 p. 14

3) Maridakis, ibid. p. 34

No more explanation was given about these important reasons which were left to the discretion of the judge. In this connection it seems that the rule was to be whether greater harm would result from granting the divorce than from preserving the marriage⁽¹⁾. However, there was no similar provision for the case of the woman's guilt.

Adultery committed unconsciously or by mistake or under pressure, being duly proven, was not to be a ground for divorce⁽²⁾.

2. Bigamy. This offence, which undermines the foundations of the family and of the society, was mentioned in the previous legislation only as a ground for nullity of the second union. In the new Act of 1920 it was explicitly also made a ground for divorce of the first marriage⁽³⁾. However, if it was committed by mistake, being proven, it ceases to be a ground for divorce⁽⁴⁾.

3. Plot against the other partner's life. It is generally accepted that further marital life with a partner who has attempted a plot against the life of the other party is impossible since such an attempt is contrary to one of the basic principles of marriage as an association for life⁽⁵⁾. For this reason either of the

1) Act 2228 of 1920, Article 2 of Triantafyllopoulos op. cit. pp. 1, 43

2) Triantafyllopoulos, ibid. p. 43; Maridakis, op. cit. p.35

3) Triantafyllopoulos, ibid. Article 2, p. 1; Maridakis, ibid. pp. 38-41

4) ibid. p. 40

5) ibid. p. 41

spouses could apply for a divorce on this ground⁽¹⁾.

In this regard every conscious action from the part of one of the partners with the intention of shortening the life of the other spouse, whether this is done at once or with a planned slow process, such as poisoning or negligence regarding the proper care for the cure of the sick partner, is considered as plot against that party's life⁽²⁾.

4. Malicious desertion for over two years. In the 1920 Act desertion was made a ground for divorce when one of the parties breaks the marital bond in order to be released from the obligations of marriage towards the other and this desertion has lasted for over two years⁽³⁾. It is called malicious because it destroys one of the main objects of marriage which is mutual association, help and comfort, which the one partner must have for the other⁽⁴⁾.

The relative grounds for divorce in the 1920 Act were summarised in Article 5 which stated :

" either of the parties may apply for a divorce if by guilt of the other the marital life was so deeply undermined that basically it is intolerable for both of them to go on living together"⁽⁵⁾.

1) Article 3 of Triantafyllopoulos op. cit. pp. 2 and 45

2) ibid. p. 45; Maridakis, op. cit. p. 42

3) Article 4, Triantafyllopoulos ibid. p. 46

4) Maridakis, ibid. p. 43

5) Article 5, Triantafyllopoulos, ibid. p. 47

The article is too general and vague, but it does trace certain limits within which a judge is free to consider each case. First, he has to satisfy himself that the married life of the couple has been undermined, then to find out the cause which produced the trouble, and lastly, to ask for sufficient evidence that it was unbearable for both parties to continue their life together⁽¹⁾.

In more details the relative grounds were included in articles 6 to 11 of the 1920 Act and they were as follows :

1. Insanity and leprosy, because in either condition the deeper and spiritual relationship between the spouses becomes impossible without much hope for a cure. These cases were made a ground for divorce in order to protect the healthy party and the children⁽²⁾. In the case of insanity, however, the new legislation required that the suffering person must have been continuously under care and treatment for at least three years before the filing of the petition for a divorce, and this provision was made, in case there is some possibility for a cure⁽³⁾.
2. Impotency which lasted for three years since the marriage⁽⁴⁾, and this was in complete agreement with the previous legislation⁽⁵⁾. This ground did not mean

1) Maridakis, op. cit. p. 48

2) Article 6 of the 2228 Act 1920, Triantafyllopoulos, op. cit. p. 2

3) Maridakis, op. cit. pp. 71-79

4) Article 8, 2228 Act 1920, Triantafyllopoulos, op. cit. p. 2 and p. 58

5) see p. 225

sterility, and the three years limit was provided for the possibility of cure⁽¹⁾.

3. Disappearance which breaks the marriage bond, but it is difficult to prove whether it was malicious or not. However, because it is hard for the remaining spouse to endure such a situation the new Divorce Act of 1920 provided that a court's confirmation of the disappearance becomes valid a year after it was pronounced and it is only then that a petition for a divorce can be filled by the remaining partner on this ground⁽²⁾. In case the person who disappeared returns after the decree of divorce has been pronounced and both parties agree to live together again, the marriage has to be re-established⁽³⁾.

Forgiveness from the part of the innocent party, as a sign of goodwill towards the guilty partner, cancels any of the aforementioned grounds for divorce, however, if the latter continues the offence the whole conduct prior to and after the forgiveness is taken into consideration, if the innocent party applies for a divorce⁽⁴⁾.

Apart from the grounds for a divorce the 1920 Act made also some provisions regarding the time limits within which a petition for a divorce could be submitted.

1) Triantafyllopoulos, op. cit. p. 58; Maridakis, op. cit. p. 79

2) Article 7, 2228 Act, 1920, Triantafyllopoulos, ibid. p. 2

3) Maridakis, ibid. p. 86

4) Article 9, 2228 Act, 1920, Triantafyllopoulos, ibid. p. 2
Maridakis, ibid. pp. 89ff

Accordingly, an application for a divorce could be submitted within a year since the innocent party became aware of the existing ground; however, if ten years had elapsed since the ground was established, with the exception of malicious desertion, insanity or leprosy, disappearance and impotency, all the other cases cease to stand as grounds for divorce⁽¹⁾.

In general the 2228 Divorce Act of 1920 was an attempt to conform the previous legislation with the needs of the time. The principle on which it was based was that of the matrimonial offence⁽²⁾. A party to the marriage could apply for a divorce only in such a case when the other party had committed certain offence or was in such a state which were regarded as fundamentally incompatible with the obligations of marriage⁽³⁾. The inequality of sexes, however, was still there, and there was also room for people to achieve divorce by mutual consent⁽⁴⁾. In order to remove these defects and to review not only the grounds for divorce but the whole previous family legislation a new Committee was set up in 1933 and its recommendations were finally included in the 1940 new Civil Code which replaced altogether the Armenopoulos' Hexabiblos which was introduced in 1835⁽⁵⁾.

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- 1) Article 10, 2228 Act, 1920, Triantafyllopoulos, op. cit. p. 2; Maridakis, op. cit. pp. 108ff
 - 2) ibid. pp. 9ff, 29ff
 - 3) ibid. pp. 30ff
 - 4) ibid. pp. 15ff
 - 5) see pp. 152-156

In the 1940 Civil Code which is at present in force the grounds for divorce are not distinguished into any groups. The right of divorce is recognised both for the husband and the wife and the legislation is applied without prejudice or discrimination of religion or denomination⁽¹⁾.

In accordance with the relevant legislation of the 1940 Civil Code the present grounds for divorce in Greece are the following :

1. Adultery and Bigamy. Either offence is a ground for divorce for the innocent party, whether it is the husband or the wife⁽²⁾. This was an important change which removed the unequal treatment of the sexes by the previous legislations. The consent of the one partner for the adultery or bigamy of the other is unacceptable⁽³⁾. On the other hand if a year lapses since the adultery was made known to the innocent party without taking any action such ground for divorce becomes void⁽⁴⁾; it is also cancelled through condonation⁽⁵⁾.

2. Attempt of murder on the part of one partner against the other. Such an attempt gives to the victim the right to demand a divorce⁽⁶⁾. This right is cancelled if a year passes without any action being taken⁽⁷⁾ or through

1) Article 1462 of the 1940 Civil Code in H. Alivisatos, Holy Canons, Athens 1949 (in Greek) p. 730

2) Article 1439 ibid. p. 727

3) Article 1439 ibid. p. 727

4) Article 1448 ibid. p. 728

5) Article 1447 ibid. p. 728

6) Article 1440 ibid. p. 727

7) Article 1448 ibid. p. 728

condonation⁽¹⁾.

3. Malicious desertion. Desertion of the conjugal home by the husband or the wife is a ground for divorce, if the absence lasted at least for two years and it is established that there was intention to break the marital bond in order to avoid its obligations⁽²⁾.

4. Prolonged disappearance. If one of the spouses disappears without giving any news, the remaining party is entitled to apply for a divorce⁽³⁾. But the disappearance has to be established first through a court's decision at least a year after the party had disappeared⁽⁴⁾.

The difference between the present article and the 1920 Act is that once the ground of the prolonged disappearance has been established through a court's decision there is no need for a year to elapse before the submission of the application for a divorce on this ground.

5. Insanity. Either of the spouses may apply for a divorce if the other partner is insane to such a degree that the rapport⁽⁵⁾ between themselves is impossible and such insanity has lasted for at least four years since the marriage was contracted⁽⁶⁾. The amendment which the present law made to the previous legislation⁽⁷⁾ was that

1) Article 1447 of the 1940 Civil Code, Alivisatos op. cit. p. 728

2) Article 1441 ibid. p. 727; cf Vassilaki, op. cit. p. 93

3) Article 1445 in connection with Articles 40-50 of the Civil Code, ibid. p. 728

4) Articles 40, 41, The Civil Code, edited by the Law Society of Athens, 1979 p. 8

5) "πνευματική των συζύγων κοινωνία"

6) Article 1443, Alivisatos, ibid. p. 728

7) 2228 Act of 1920 Article 6, see p. 232

it extended the period of waiting from three to four years for more certainty of medical examinations whether the disease is curable or not⁽¹⁾.

6. Leprosy⁽²⁾. This ground was based on the previous legislation which prohibited the marriage between a healthy person and a leper and stated that if the disease appeared after the marriage and is medically established then it becomes immediately a ground for divorce⁽³⁾.

7. Impotence. According to the present Civil Code sexual incapacity constitutes a ground for divorce if it existed since the marriage was contracted and lasted for three years and continues to exist at the time of the application for the divorce⁽⁴⁾.

8. Undermining of the marital life. Each of the spouses has the right to demand a divorce if by fault of the other the common marital life has become unbearable for the innocent party⁽⁵⁾. Of course it is always difficult to determine the causes which undermine marital life and from which moment the common life becomes unbearable, since actions which for one couple are sufficient to ruin definitely their mutual union, for another couple may rest without any serious consequences. However, with regard to this ground it seems that the legal practice in Greece has accepted various facts and actions as

1) Vassilaki, op. cit. p. 97
2) Article 1444 of 1940 Civil Code, Alivisatos op. cit. p.728
3) Roylos op. cit. p. 660
4) Article 1446, Alivisatos, ibid. p. 728
5) Article 1442 ibid. p. 728

causing the undermining of marital life, such as :
illtreatment, insults and abuses, cruelty, slander,
infamous charges, refusal of conjugal rights, association
with persons of doubtful morals, unbearable jealousy,
lack of proper respect towards the other spouse,
immoral and infamous profession, habitual drunkenness,
the demand of unnatural relations, unfounded doubts
regarding the legitimacy of a born child, false
accusations, neglect of due maintainance etc.⁽¹⁾.

In this respect the law allows the applicant to invoke
past incidents or actions which on themselves are not
grounds for divorce, but could reinforce the application
which is made on the ground of the present article⁽²⁾.

However, if it is established that the plaintiff
was the principal cause for the undermining of the
marital life, he or she loses the right for divorce
even if the other party is also to blame⁽³⁾.

The right for an application on this ground ceases
if a year has passed since the innocent party became
aware of or suffered the offence, or at least ten years
after the ground was established⁽⁴⁾, or through
condonation⁽⁵⁾.

1) Vassilaki, op. cit. p. 95

2) Article 1449 1940 Civil Code, Alivisatos, op. cit. p. 729

3) Article 1442 para 2, ibid. p. 728

4) Article 1448, ibid. p. 728

5) Article 1447, ibid. p. 728

According to the 1940 Civil Code the only competent authority to pronounce a divorce remained the civil court⁽¹⁾. The Greek Church, however, reserved her important role in attempting the reconciliation of the disputing parties, which is obligatory and takes place before all proceedings in the civil court⁽²⁾. The party who is applying for a divorce is obliged to contact the Diocesan Bishop or Metropolitan who invites both parties and uses all the spiritual means in his disposal to reconcile them⁽³⁾. If after a period of three months the attempt fails, he (the Bishop) notifies the district tribunal which only then proceeds in the hearing of the case. If the Bishop after receiving the notice of the application takes no action during the ensuing three months, the applicant may bring this to the notice of the court which upon such evidence proceeds with the hearing of the case⁽⁴⁾.

The right for a divorce ceases through reconciliation of the parties and this happens in the cases of adultery, attempted murder, desertion and of serious undermining of the marital life⁽⁵⁾. In these cases, as already mentioned, the application for a divorce is not accepted if a year has lapsed since the interested party became aware of the offence and in any case after ten years have lapsed since the ground was established⁽⁶⁾.

1) Article 54 para. 3, Constitutional Law of the Greek Church, Alivisatos, Holy Canons, op. cit. p. 563

2) Article 55, para 1-3 ibid. p. 563

3) If the couple belong to a different religion or denomination then the competent authority for their reconciliation is the local head of their religion or denomination. If it is a mixed marriage then the local Justice of Peace may also act in this capacity. cf Vassilaki, op. cit. p. 109

The decision of the court pronouncing a divorce is final without a right of an appeal⁽⁷⁾. A copy of the decision is addressed to the proper ecclesiastical or religious authority which registers the decision and pronounces the spiritual dissolution of marriage which gives the right to the parties to marry again up to a third time⁽⁸⁾. The guilty party whose name is mentioned in the decision⁽⁹⁾ is obliged to compensate the innocent party⁽¹⁰⁾. Furthermore, according to the circumstances, the guilty party undertakes to give an alimony to the innocent party⁽¹¹⁾, which ceases if the innocent party contracts a new marriage⁽¹²⁾. In case of a divorce being pronounced on the ground of insanity, the party in good health is obliged to support the ailing party⁽¹³⁾. Following the divorce the woman is allowed to use her maiden name⁽¹⁴⁾, but she is not to marry before the expiration of ten months after the divorce has been pronounced, except she gives birth to a child during that period⁽¹⁵⁾.

On the whole the 1940 Civil Code was a further improvement of the previous legislation in removing the inequality of sexes and bringing up to date the grounds for divorce.

4) Article 55 para 3 of the Constitutional Law of the Greek Church, Alivisatos, Holy Canons, op. cit. p. 564

5) Article 1447, ibid. p. 728

6) Article 1448 paras 1 and 2, ibid. p. 728

7) Article 1438, ibid. p. 727

8) Vassilaki, op. cit. p. 112

9) Article 1450, Alivisatos, op. cit. p. 729

10) Article 1453 which refers to serious moral damage of the innocent party as a result of the divorce, ibid. p. 729

11) Articles 1454, 1456 and 1458, ibid. pp. 729-730

12) Article 1457, ibid. p. 730 13) Article 1459, ibid. p. 730

14) Article 1452, ibid. p. 729 15) Article 1355, ibid. p. 724

5. Further developments from 1950 to the present time

After 1950 a major issue regarding the law of marriage and divorce, which drew the attention of both Church and State in Greece, was the case of the so-called dead marriages i.e. of couples who were living apart for many years without any hope of reconciliation and at the same time without any ground, according to the existing law⁽¹⁾, to apply for a divorce in order to legalise the illegitimate unions which they had created in the meantime. The problem existed long before the introduction of the 1940 Civil Code and for the first time the case was presented during the debates for the passing of the 1920 Divorce Act when a recommendation was made for establishing the irretrievable breakdown of marriage (ἀντικειμενικός κλονισμός) as a ground for divorce, which was finally rejected⁽²⁾. On 12 August 1932 the Greek Parliament was debating a Bill to amend the 1920 Divorce Act so that the guilty party would also have the right to apply for a divorce when the

1) The grounds for divorce are mentioned in the articles 1439-1446 of the 1940 Civil Code and they are :
(a) adultery, art. 1439; (b) bigamy, art. 1439;
(c) attempted murder against the other partner, art. 1440;
(d) malicious desertion for at least two years, art. 1441;
(e) serious undermining of the marital bond, art. 1442;
(f) insanity which lasts for at least four years, art. 1443;
(g) leprosy, art. 1444; (h) disappearance, art. 1445;
(i) impotency which existed before the marriage and lasts for at least three years after the marriage, art. 1446.
For more details see Part II chapter 4 "The Law of Divorce in Greece between 1850-1950" p. 221

2) Ekklesia, Monthly official Magazine of the Greek Orthodox Church, (in Greek) No 20, October 1977, p. 344

separation of the spouses had exceeded eight years.

That Bill, however, was never enacted as a law, because soon Parliament was dissolved and elections for a new Government had to take place⁽¹⁾.

In November 1958 at the recommendation of the late Metropolitan of Elasson Iakovos, the Hierarchy of the Greek Church accepted as transitory a proposal for "dissolving a marriage after a separation of the spouses which exceeded ten years"⁽²⁾. However, a year later, this decision was repealed on the ground that it had been taken in haste and without due consideration⁽³⁾.

In 1963 the question was raised again in Parliament, and the Speaker of the House informed its Members that at the request of the Minister of Justice the Greek Church had replied that the matter will be discussed at the next session of the Hierarchy⁽⁴⁾.

A further attempt was made on 18 March 1965 when a Bill, supported by sixty five M.P.s was presented to the Greek Parliament, proposing the "amendment of article 1442 of the Civil Code and establishing the principle of irretrievable breakdown in some divorces"⁽⁵⁾. The Bill provided for the dissolution of

1) Ekklesia, op. cit. p. 341

2) ibid. p. 341

3) ibid. p. 341

4) ibid. p. 342

5) I.S. Spyridakis, The Divorce in accordance with Act 868/1979, (in Greek) Athens-Komotini, 1979, p. 138

a marriage after seven years of separation and even suggested the right of the guilty party to seek a divorce ⁽¹⁾. The Holy Synod then addressed a Synodical letter to the Government warning about the consequences if the proposal was to be adopted. Amongst other points it stated that :

" If one of the spouses deserts the other (which according to article 1441 is a malicious desertion) and insists on his/her desertion, then as if rewarded for his/her contempt of the divine and human laws, -the deserter- will have the right to seek the divorce, whilst, according to the law which is at present in force, only the deserted party has this right. This means that divorce will be given to the guilty party at the expense of the innocent. And such a divorce is both morally and spiritually inconceivable... For these reasons the Holy Synod cannot accept the introduction of the so-called irretrievable breakdown of marriage"(2).

The Government of the time appealed then to six of the most representative legal bodies, representing authoritative legal opinion in the country for their views, i.e.

- 1) The Highest Court of Appeals ("Άρειος Πάγος")
- 2) The Law Society of Athens,
- 3) The Law Society of Thessaloniki,
- 4) The Law School of Athens University,
- 5) The Law School Of the University of Thessaloniki,
- 6) A twelve member Committee comprising the most distinguished legal experts(3).

The Highest Court of Appeals unanimously rejected the recommendation of the sixty five M.P.s ⁽⁴⁾ and

1) Spyridakis, op. cit. p. 138

2) Ekklesia, op. cit. p. 344

3) ibid. p. 344

4) Decision No 33/1966 in The Law Tribune (Νομικόν Βήμα) the official magazine of the Law Society of Athens, vol. 14 p. 609

supported the legalising of contracting a fourth consecutive marriage⁽¹⁾.

The Law Societies of Athens and Thessaloniki recommended the adoption of the irretrievable breakdown⁽²⁾.

The Report of the Law School of Athens University stated that it was unacceptable to give the right of divorce to the guilty party in the case of seven years separation, because this will lead to the automatic divorce⁽³⁾ but suggested that the irretrievable breakdown as a ground for divorce could be a subject for further discussion⁽⁴⁾.

The Law School of the University of Thessaloniki and the Twelve Member Committee of distinguished legal personalities rejected the right of the guilty party to petition for a divorce, which would establish the principle of automatic divorce⁽⁵⁾.

Following these developments and especially after the Reports of the six official legal bodies, the Church continued more vigorously to defend her case, but at the same time the supporters of the Bill continued their pressure on the Church and the State to achieve the change they wanted.

1) Ekklesia, op. cit. p. 342

2) Spyridakis, op. cit. p. 139

3) Ekklesia, ibid. p. 344

4) Armenopoulos, official magazine of the Law Society of Thessaloniki, 1967, p. 173; Spyridakis, op. cit. p. 139

5) Ekklesia, ibid. p. 342

On 10 April 1968 the Holy Synod of the Greek Church addressed a Synodical letter to the Minister of Justice rejecting any suggestion for the introduction of the so-called automatic divorce which would result by the introduction of the new grounds of "irretrievable breakdown" or the "prolonged separation"⁽¹⁾.

A few years later the Standing Committee of the Holy Synod on "Nomo-canonic matters"⁽²⁾ met on 29 February 1972 to discuss the proposed new ground for divorce, i.e. the irretrievable breakdown after separation of ten years. By majority the recommendation was rejected⁽³⁾. At the request of the Holy Synod the Standing Committee on "Nomo-canonic matters" met again on 4 February 1975 and after due consideration they reported once again rejecting the proposed new ground of divorce for irretrievable breakdown of marriage⁽⁴⁾.

In 1975 the Holy Synod appointed a Committee of three Metropolitans⁽⁵⁾ to meet with a Committee of legal experts which was appointed by the Government⁽⁶⁾. At two extensive meetings which followed, the representatives of the Church refuted the arguments for any change and defended the Church's position⁽⁷⁾.

1) Ekklesia, op. cit. p. 342

2) ibid. p. 342 This Committee was mainly concerned with matters related to both civil law (νόμος) and ecclesiastical legislation (canons - κανόνες)

3) Ekklesia, ibid. p. 342

4) ibid. p. 342

5) Encyclical letter No 4255 of 29 October 1975. The Metropolitans who were appointed were Panteleimon of Corinth, Damaskinos of Phiotis and Nikodimos of Patras, see Ekklesia, ibid. p. 343

6) The Government's Committee comprised twenty members who were Professors of Law, Judges, Presidents of Law Societies etc. ibid. p. 345

7) ibid. p. 343

Very briefly the discussions of the two Committees centered mainly on the following three questions which were addressed to the representatives of the Church :

- 1) " Is it not more honest and sincere to have the divorce pronounced as proposed by the Bill (after a long separation) rather than the existing situation which gives room to divorce by mutual consent, collusion and connivance or blackmail and extortion ?"
- 2) " In view that in the past the ecclesiastical legislation used to grant divorce even in cases where the respondent was not guilty, why is the Church now refusing the right of the State to legislate on similar grounds and objects to the civil courts applying the same principle ?"
- 3) " What should be done to accommodate the countless cases of illegal unions and of unlawful spouses and children ?"(1)

In replying to these questions the representatives of the Church observed that :

The first question was irrelevant, because connivance and collusion exists only where both parties agree for the dissolution of their marriage. But the point here was, when divorce is pronounced against the will of one of the parties. How can there be talk about divorce by mutual consent when one of the parties concerned does not want to be divorced ?(2)

With regard to the second question the representatives of the Church said that if in the past the ecclesiastical courts appeared to have been granting divorce on grounds not of a matrimonial offence (i.e. for insanity or another incurable illness) in fact there was always another reason

1) Ekklesia, op. cit. p. 345

2) ibid. p. 345

establishing the offence of the respondent, and this was always mentioned in the court's decision (i.e. that the illness existed before the marriage and was kept secret, therefore the respondent was guilty of deceit and not for the illness). Similarly for the cases of divorce for intense hate between the spouses, from the evidence presented it was always proved that unfaithfulness was the real cause of hate, or that there was an attempt against the life of the other party, and on the ground of such offences divorce was pronounced in the past when jurisdiction was in the hands of the ecclesiastical courts⁽¹⁾.

As regards the third question "what should be done to-day", the representatives of the Church made the following observations :

1. That the number of those concerned with the so-called automatic divorce was not correct. The recommendation in support of the Bill claimed their number to be about 10.000. However, through the statistics of the Church their number did not exceed 3.500 and not a few of them, for various reasons, were not seeking divorce. Therefore the number of those who wanted to dissolve their marriage on the proposed ground was very small. Therefore it was considered unfair for the sake of such a small proportion to pronounce a law that will effect the whole society⁽²⁾.

1) Ekklesia, op. cit. p. 345

2) ibid. p. 346

2. That it was not right to place the illicit unions (and the children born from them) on a more advantageous position than the deserted legal spouses and the unjustly orphaned lawful children. "Otherwise we tend to condemn the innocent and reward the guilty party, which is something totally unacceptable"⁽¹⁾.

3. That at least those guilty of violating their obligations towards their families should deserve to bear the consequences of their action. And those who already had taken advantage through collusion or connivance to replace their lawful partners should of course be discouraged and not justified, "so that the rest, men and women, should have fear". Otherwise neither the family nor society would be able to stand⁽²⁾.

4. Finally, it was observed that the existing legislation on divorce was so loose, that most cases, reasonable and unreasonable, could pass through. However, those who could not find a solution to their problem prove by their inability that they have no case. And there is no need to twist the law and morality in order to satisfy a few -men and women- who are clever and unhesitating⁽³⁾.

These very briefly were the main arguments put forward by the representatives of the Church during their meetings with the Government's Committee. As a matter of consequence

1) Ekklesia, op. cit. p. 346

2) ibid. p. 346

3) ibid. p. 346

a Bill for "amending the Divorce regulations of the 1940 Civil Code" which was proposed by the Government's Commission in November 1976 had eventually to be withdrawn⁽¹⁾.

The Metropolitans who took part in the joint Commission presented their reports to the Synod of the Hierarchy which met from 24 August to 2 September 1977 and their reports were received unanimously⁽²⁾.

The Metropolitan of Corinth Panteleimon concluded his address to the Synod of the Hierarchy with these words :

" Up to the present time the Church has strongly rejected any suggestion for extending the grounds for divorce. I do not know whether the present body of the Hierarchy will once again reject the recommendation, but I am sure that the State awaits for a more convenient time to bring the matter again to Parliament and to have it passed by a comfortable majority. Consequently be provoked again and abused, and perhaps the worst, we will become for a countless time "the point of dispute". But despite of all this and after so many concessions having been made from the part of the Church on matters related to marriage and divorce, whence there is no room for more retreat, let us prove by our deeds and decisions that we are, at least, moved by the evangelical saying "it is better to obey God rather than men"⁽³⁾

The Metropolitan of Patras Nikodimos after giving an account of the historical development of the efforts for introducing the new ground for divorce, he referred to the meeting which the Church Commission had had with the representatives of the State Commission and commenting on the proposed new ground he made the

1) Spyridakis, op. cit. p. 130; A. Gazis, The Divorce, Athens-Komotini, 1979 (in Greek) pp. 12-13

2) The deliberations on this problem lasted for two days 26 and 27 August 1977, cf Ekklesia, op. cit. pp. 340-353

3) ibid. p. 343

following remarks :

" If the seven years separation is accepted as a new ground then divorce will become "automatic" because the role of the court will then be that of a time-keeper i.e. waiting for the expiration of seven years in order to pronounce the dissolution of marriage"(1).

" Whilst the Bill appears to have been withdrawn after the meetings of the two Commissions, the danger is still there. Those concerned have not given up hope. They desperately continue their efforts. The Hierarchs of our Church are called to attest more officially their opposition and to use the Church's authority and weight to prevent any disaster"(2).

Similar criticisms of the proposed Bill were made by the Metropolitan of Kassandria Synessios (3).

At the same meeting of the Hierarchy the case of those who for many years were living apart and were seeking the leniency of the Church was presented by the Metropolitan of Peristeriou Alexander, who very briefly presented their case as follows :

" Those who are now appealing to the Church had for a long time formed a "Panhellenic Union for the Protection of the Family of Separated Spouses" and amongst their members there were some who were awaiting for over forty and fifty years to be released. Their marriages were considered dead since they were complete failures from the start and in the course of time the gap was so much widening that irrespective of who was more or less to blame, there was no hope or possibility for reconciliation. Had there been such a possibility the separation would not have lasted for so long. They were claiming that the Church, by refusing to consider their case, was in fact recognising and prolonging the registered act of an inexistent marriage. Such a situation was offending the sanctity of marriage, because, in this way, the Church, without being aware, was condoning blackmail between men and women and contributing to the stirring of passions, hate, revenge, slunder and the moral corruption of the innocent children who were witnessing mutual

1) Ekklesia, op. cit. p. 344

2) ibid. p. 346

3) ibid. pp. 349-352

accusations and an appalling behaviour from the part of their parents"(1).

" Even if we are considered as the sole guilty parties, -which is something improbable- is the Church to condemn and cut off for life her prodigal sons and daughters ?"(2)

" There are thousands of men and women, who, because of the prolonged separation, have created illegal unions from which they have given birth to new children. Some of us even have grandchildren. What is the Church going to do ? Is she going to ignore us ?"(3)

" A faithful Christian was deserted by his wife who was converted by the Jehovah Witnesses and took away also their children. The State does not see this as a ground for divorce. The man has been deserted for thirty years and his problem remains still unsolved . He is paying 9.000 drachmas maintainance to his wife whilst she works in the conversion of others. In his latest application to the Holy Synod he mentions that he asked the Metropolitan of Florina Augustine for an advice, and the answer he received back was "to bear his cross". The same pious Christian is asking :"Thirty years have passed by and for how long more shall I bear my cross ?"(4)

" We could be considered as the guilty parties of the separation, because we have left the first marital home. But how and why most of us have reached this psychological position ? Are we the only ones to blame ? Be our fair judges. No one under good conditions of his family would leave his wife and children. The causes are not always trivial... Since 1920 there are thousands of cases in the Greek Society with countless children who are commonly known as illegitimate. They are illegitimate for the Church, illegitimate for the State, illegitimate for our good and uncompromising society. What then ? Our pleas to the Church for our long sufferings will not be accepted ? The representatives of the Gospel of love and of Him, Who taught the parable of the Prodigal Son, Who forgave tax-collectors, adulteresses and robbers, would they not find for us and for our children some solution ? We are the unfortunate sinners, but we have remained faithful children of the Church. This is why we appeal to Her as our Mother and we plead with You, Holy Fathers, to show us some understanding. We ask for mercy"(5)

1) Ekklesia, op. cit. p. 347

2) ibid. p. 347

3) ibid. p. 347

4) ibid. p. 347

5) ibid. pp. 347-348

Following this emotional plea on behalf of those concerned, the Metropolitan of Peristeriou Alexander appealed to the members of the Hierarchy for their merciful and compassionate consideration of their case. He warned of the dangers involved if the Church was to continue her rigid and uncompromising attitude and urged that she should make use of her principle of Economy which has always been used as a safety valve for such cases, and upon which, for the sake of the hardness of men's heart she has extended in the past the sole ground of unfaithfulness and had accepted other grounds as well, of minor and irrelevant value⁽¹⁾. For the interest of the Church, of the Family and of the society he proposed the following solution :

" That the present Assembly of the Hierarchy should adopt and apply the decision of the Hierarchy which was announced to the Greek people through an Encyclical in November 1958"(2).

That decision, which was in accordance with the long tradition of the Church in making use of the ecclesiastical Economy with extreme mercifulness and condescension towards human weakness, stated that either of the spouses who were living apart for continuous ten years, had the right to seek divorce, even without the consent of the other party, in order to protect the interests of any unlawful children. It also added that

1) Ekklesia, op. cit. p. 348

2) ibid. p. 349

this regulation and the consent of the Church was transitory i.e. its force would be only for six months⁽¹⁾.

The Metropolitan of Peristeriou concluded that this solution would be a remedy for the existing needs and social evils and will not be a permanent enactment of a law for the future. The Church would disarm her critics and by applying the ultimate evangelical commandment of love will prove once again that she knows how to remedy those suffering by using Economy, condescension and affectionate leniency⁽²⁾.

Despite this appeal the decision which followed the voting of the Hierarchy was taken unanimously against the Bill for "amending the divorce regulations of the Civil Code"⁽³⁾. It was also decided that the Minister of Justice and the media should be advised accordingly⁽⁴⁾. The result of this decision was that during the ensuing year the pressure on the Church mounted from the part of those concerned and from the daily media!⁽⁵⁾

1) Ekklesia, op. cit. p. 349

2) ibid. p. 349

3) The official attitude of the Church on this matter was repeatedly expounded on several occasions and mainly through the following channels : (a) the official monthly magazine of the Church of Greece "Ekklesia" vols 44-57; (b) "Ho Foni tou Kyriou" (The Voice of the Lord) 25 July 1972; (c) the Encyclical No 2134 of the Holy Synod of 18 November 1976; (d) the special edition of "Ho Foni tou Kyriou" December 1976; (e) the Encyclical No 2154 of the Holy Synod of 18 November 1976; (f) the telegraphic Encyclical No 2105 of 15 March 1977 to all the Metropolitans of Greece, of whom almost all declared themselves against the additional ground for divorce and the clergy through various resolutions voted against it. So the official attitude of the Greek Church throughout these efforts was always negative. For more details see Ekklesia, op. cit. 1977, p. 343 and 1980 pp. 48ff

4) Ekklesia, op. cit. 1977 p. 353 5) ibid. 1980 p. 50

On January 1, 1979 the Minister of Justice proposed a new Bill which provided that either of the spouses could apply for a divorce, if the marital union had been broken through separation for six years, and that the right for such an application was given only for six months after the day of the passing of this Bill into Act.⁽¹⁾

It seems that this time those concerned were determined to see the Bill passed, and a certain influence of this could be noticed in a certain change of the Church's attitude. On 25 January 1979 the Hierarchy of the Greek Church announced that :

" In order to deal in a merciful way with the problem of spouses who are living apart for a long time, it is considered necessary to have some guarantees for the innocent parties, and that before any proceedings it is imperative for each case to be examined separately by a special body of five Prelates, amongst whom the Prelate under whose jurisdiction each case belongs, together with a judge of a Court of Appeals"⁽²⁾.

The Bill was introduced in Parliament on 5 February 1979 and after being debated for three days⁽³⁾ it was passed as transitory law, known as the 868/1979 Divorce Act which came to power on 1 March 1979 and remained in force for six months, i.e. 1 September 1979⁽⁴⁾.

Apart from the new ground of six years separation⁽⁵⁾ the new Act gave discretion to the Court to refuse the dissolution of marriage (a) if it is satisfied that there is strong possibility for reconciliation and

1) A. Gazis, op. cit. pp. 15-16

2) Ekklesia, op. cit. vol. 56(1979) p. 66 and vol. 57 p. 50

3) Spyridakis, op. cit. pp. 135-178

4) Article 5 868/1979 Divorce Act, Spyridakis, ibid. pp.122f

5) Article 1 868/1979 Divorce Act, ibid. pp. 51-82

(b) if the respondent objects to the dissolution of marriage for special reasons i.e. if the consequences of the divorce will cause extreme hardship to the respondent or their children⁽¹⁾. Also it provided that the respondent to such a petition for a divorce could produce evidence which may be accepted by the Court, that the petitioner was the guilty party for the breakdown of marriage and not the respondent⁽²⁾.

The argument which has always been used against the attitude of the Church was that whilst she insisted on the principle of matrimonial offence, she seemed, under the pre-1979 Divorce legislation, to have silently condoned divorce by mutual consent, probably because when the weak party consents, it is implied that she or he does not feel having been wronged⁽³⁾.

It seems that the passing of the 868/1979 Divorce Act was the result of some new efforts for mutual understanding and cooperation between Church and State. After a certain change in public opinion the Civil Authorities proceeded only in a transitory solution of the problem. At the same time the decision of the Hierarchy on the 25 January 1979 to consider the problem with more compassion shows an effort on the part of the Church to understand the

1) Article 2, 868/1979 Divorce Act, Spyridakis, op.cit. pp.83ff

2) Article 3, ibid. pp. 111-119 The main criticisms made against the 868/1979 Divorce Act are on the one hand its transitory character, and on the other, the inadequate protection of the interests of the innocent parties, regarding pension and other social benefits. Ibid. p. 44 Gazis, op. cit. p. 24

3) ibid. p. 23

views of the State⁽¹⁾. With that decision the Church objects to the automatic divorce, but accepts under certain conditions and by virtue of "Economy" and condescension the solution to the problem of the separated for a long time spouses.

According to unofficial information until the end of April 1979 there were 320 petitions for divorce submitted to the Supreme Court of Athens on the ground of prolonged separation. Of these petitions 20 were submitted by women⁽²⁾.

During the debates in Parliament several of the speakers referred to the possibility of introducing civil marriage⁽³⁾. But the opinion that this will not make divorce easier seems to have prevailed⁽⁴⁾. Also a suggestion for a clear distinction between the grounds for a religious divorce and those for a civil divorce was considered unacceptable, but necessary only in the cases where the Church refuses to grant the spiritual dissolution of marriage or to grant the licence for re-marriage⁽⁵⁾.

1) Gazis, op. cit.

2) Spyridakis, op. cit.

3) ibid.

1) A. Gazis, op. cit. p. 23

2) ibid. p. 20 According to the Secretary of the Nomocanonic Committee of the Archdiocese of Athens the Rev. E. Mantzouneas, there is no Central Office where the statistical data of divorces for the whole of Greece are collected. The Country is divided into 75 Metropolises each of which is handling separately its own cases. The following list was made available regarding the divorces pronounced in Athens during the period 1950-1979 :

<u>Year</u>	<u>No of Divorces</u>	<u>Year</u>	<u>No of Divorces</u>
1950	1.203	1975	1.979
1955	1.327	1976	2.110
1960	1.608	1977	2.079
1965	1.089	1978	2.243
1970	1.649	1979	2.435

Following these references for the introduction of civil marriage in Greece, the Greek Church took the initiative to call for a Consultation in order to have a wider exploration of the subject and before concluding to certain concrete views⁽¹⁾. This Consultation took place on 6 February 1980 at the Orthodox Center in the Monastery of Penteli. At the invitation of the Holy Synod the Theological School of the University of Athens appointed Professor Vlassios Feidas to introduce the subject "Civil Marriage and the Church" which was attended by many Prelates, theologians and academics who took part in the discussions⁽²⁾.

The Professor referred to the special relationship of the Orthodox Church and the State in Greece, due to the religious homogeneity of the Greek people⁽³⁾ and particularly to the provision of the Greek Constitution for close collaboration and dialogue between Church and State on matters relating to Marriage and Family⁽⁴⁾. He stressed that, any partial move from the part of a democratic State, for a general introduction and imposition of civil marriage upon the members of the Church, is utterly inconceivable and in that case the action would be contrary to the existing Constitution and to the laws of the Country⁽⁵⁾ and that the Church

1) "Ecclesiastical Truth" (in Greek) Fortnightly review of the Church of Greece, No 81, 16 February 1980 pp. 1+7

2) ibid. p. 1

3) 97% of the Greek population are members of the Greek Orthodox Church, ibid. p. 7

4) Ekklesia, op. cit Nos 6, 7-8, 1980 pp. 116, 137ff

5) ibid. p. 137f

would have every right to protest and disapprove⁽¹⁾. He suggested that a dialogue between Church and State should take place on this matter and that the legislation of civil marriage should apply only for non-orthodox Christians and mainly for those who conscientiously and publicly are cut off from her⁽²⁾. He underlined the existing system of collaboration between Church and State which excludes any partial action from either side⁽³⁾ and referred to the situation in the countries of the European Common Market which in this ~~the~~ matter varies and is regulated by internal and historical reasons of each Country⁽⁴⁾. The suggestions for general implementation of civil marriage derive from circles which want to displace the Church from the public and private life of the Greek people, and finally he suggested that disciplinary measures should be imposed on those members of the Church who defy the Mystery, and that civil marriage should be introduced only for the non-orthodox Christians, so that there will be no more ridicule of the Mystery⁽⁵⁾.

Next the Legal Advisor of the State Mr. Marinos spoke about the need to avoid confusion between the two legal entities, the Church and the State, and that whilst

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- 1) Ekklesia, op. cit. Nos 7-8 p. 140
 - 2) ibid. p. 140
 - 3) ibid. p. 137
 - 4) ibid. p. 141
 - 5) ibid. pp. 141-142

for the Church marriage is a mystery, for the State it is considered as a civil contract with legal implications. However, he said "in a democratic country the religious marriage cannot be abolished, because it derives from the religious conscience of the faithful". He referred to the existing tendencies for a separation between Church and State and suggested the simultaneous contracting of both civil and ecclesiastical marriage, adding that since the civil marriage has no ritual it will not create problems of conscience for the faithful⁽¹⁾.

Then Professor Gerassimos Konidaris expressed his opposition against anything that will weaken the sacred bond of the Greek family⁽²⁾. The Vice-Chancellor of the University of Athens Professor Evangelos Theodorou referred to the various types of civil marriages which have been legislated in Europe⁽³⁾. The Right Reverend and Professor Anastassios Yannoulatos expounded the universal religious dimension of marriage and suggested that civil marriage should be used only for those who were not members of the Church⁽⁴⁾. The Most Reverend Metropolitan of Dimitriadou Christodoulos asked for a deeper study of the subject in order to avoid partial actions⁽⁵⁾.

1) Ecclesiastical Truth, op. cit. p. 7

2) ibid. p. 7

3) ibid. p. 7

4) ibid. p. 7

5) ibid. p. 7

The Metropolitan of Nea Ionia Timotheos referred to particular cases, and the Metropolitan of Piraeus Kallinikos to pastoral discipline⁽¹⁾. The Legal Advisor of the Greek Church Mr. Lilaïos advised that the whole problem should be examined again from the ecclesiastical side and referred to opinions of the old legal experts of his generation⁽²⁾.

The Consultation was concluded by his Beatitude the Archbishop of Athens Seraphim who spoke in defence of the individual's right for religious freedom and of the obligation of the Church to retain the Mystery of marriage only for her faithful members and that for the future it would be right to avoid the celebration of religious marriage for persons who do not wish to have any connection with Christ and His Church⁽³⁾.

The general conclusion of that Consultation was that the Sacrament of marriage should be administered only to the members of the Church and that those who publicly declare that they are not members of the Orthodox Church may go through the civil service of marriage⁽⁴⁾.

Following the above exposition of developments in Greece from 1950 to the present time, it is obvious that a certain socio-political pressure is exerted on the Church to adopt positions which are regarded as

1) Ecclesiastical Truth, op. cit. p. 7
2) ibid. p. 7
3) ibid. p. 7
4) ibid. p. 7

inevitable in the light of recent social concrete developments.

The Church's attitude seems to be twofold : on the one hand she stands firm by her canonical and theological mind on the issue, and on the other hand, when circumstances demand it, the Church accommodates her principles by making Economy the basis of her response.

The answer to the concrete problems of her circumstances is always practical and responsible, rather than abstract, legalistic and arbitrary.

However, it is also clear that a certain pressure is superimposed on Church and State relationships over the issue, resulting from the wider European context into which the Church and the State of Greece are entering and to a certain degree are expected to conform with its general principles. The challenge of the secular European values to the Greek Church and State principles is a crucial one.

Will the Greek Church succumb to the temptation of secularisation of the Greek society, becoming thus a Church like the other European Churches which do not command a total grip upon the people of their land, or will she be able to defend not only her standards, but also protect Greek society from losing its distinct religious cultural identity ?

Will she be able to play a leading role in the recovery of a more coherent inter-relation of faith and culture in the European context ?

These are questions which naturally arise from the latest debates and tendencies in contemporary Greece, concerning the concrete case of marriage and divorce in Church and State.

The answers are not easy to predict, but whatever they are it is certain that they will have important consequences for both European and Greek society.

It may be best for the Church of Greece to consider her attitude on this issue in comparison or even in dialogue with other Churches in the European context, which have to deal with it and are confronted with similar dilemma.

It seems certain that a Greek Orthodox and Anglican discussion of marriage and divorce in Church and State in this present situation will render positive fruits and help for both Churches and will make a lasting contribution.

PART III

1. Comparison of the civil and ecclesiastical legislation on Marriage and Divorce in England and Greece

Having first examined in an introductory manner the beginnings of the institution of marriage from the Old to the New Testament and its historic development in the early Church and the Roman and Byzantine legislation, we expounded in greater detail both the essential conditions required in England and Greece for contracting a valid marriage during the period 1850 - 1950, as well as the respective laws on Divorce and Nullity with their further developments to the present time.

In this section we shall briefly compare the main points of the civil and ecclesiastical legislation in England and Greece, with the view to reaching our conclusions in our investigation.

Generally speaking, in both countries, the civil law not only took over the jurisdiction on all matrimonial matters, but also has altered the marriage laws by legislation and so modified considerably the Canon Law of the Church. For example, in England, the law of marriage and divorce has been reviewed three times by Royal Commissions, one appointed in 1850, the

next in 1909, and the last in 1951 which were reported in 1853, 1912 and 1956 respectively⁽¹⁾. Until 1857 the marriage laws of England were identical with those of Canon Law, and all matrimonial problems were tried and settled in the ecclesiastical courts⁽²⁾. Where the question of marriage arose before the common law judges, they referred themselves to the Bishop, as the ecclesiastical judge, and they were governed by the certificate which he returned to them⁽³⁾. On occasions where the question arose before the common law judges and when they could not consult the Bishop, they would have regard to the ecclesiastical law and decide accordingly⁽⁴⁾. The 1857 Matrimonial Causes Act, based on the Report of the 1850 Royal Commission, abolished the jurisdiction of the ecclesiastical courts in matrimonial matters and set up a new court "The Court for Divorce and Matrimonial Causes" to exercise that jurisdiction⁽⁵⁾.

A similar development took place also in Greece, where up to 1835 all matrimonial matters were under the jurisdiction of the Church and since then by a Royal Decree that responsibility was transferred to the civil courts⁽⁶⁾.

1) Report of the Royal Commission on Marriage and Divorce, 1951-1955, op. cit. p. 3

2) R.H. Graveson, "The background of the Century", A Century of Family Law, op. cit. p. 5

3) T.E. James, "The English Law of Marriage", A Century of Family Law, op. cit. p. 26

4) ibid. p. 26

5) Report of the Royal Commission, 1951-1955, op. cit. p. 4

6) Royal Decree 23 February 1835; A. Gazi, General Principles of the Civil Code, Athens, 1970 p. 10 see also pp. 152ff

In the legislation of both countries, consent and the formalities required for a valid marriage have been given special attention. It is not enough to understand the words of the ceremony or simply to know that a ceremony is being performed, if the capacity to understand the nature of the contract and the accompanying duties and responsibilities is absent. In both legislations it is required that the parties must be capable of understanding the contract, which they are freely and willingly entering into, and to undertake the duties and responsibilities which it carries⁽¹⁾.

As for the formalities required for a valid marriage, these have been regulated by a series of statutes beginning in England almost a century before the 1857 Matrimonial Causes Act and concluding with the 1973 Matrimonial Causes Act, and in Greece from the 1835 Royal Decree up to the publication of the 1940 Civil Code which includes the relative legislation⁽²⁾.

In England from 1753 until 1836 the formalities required for a valid marriage were for such a marriage to be solemnised in accordance with the rites of the Church of England, in the presence of at least two witnesses and of a clergyman in holy orders, after due publication of banns, or by special or common licence⁽³⁾.

1) Article 1373 paras 2 & 3 of the 1940 Civil Code and Articles 1350-1352, Alivisatos, op. cit. pp. 722-723

2) see chapter 2 of Part I pp. 64ff and chapter 2 of Part II pp. 163ff

3) T.E. James, "The English Law of Marriage", A Century of Family Law, op. cit. p. 32, see also chapter 1 of Part I pp. 53ff

After 1836, civil marriages were introduced in England, according to which parties desiring to contract a marriage were allowed to do so without any ceremony in Church, but only in the presence of a Superintendent Registrar, after a very inadequate publication of their intention or even without such publication by licence of the Registrar⁽¹⁾.

In Greece it has been recognised at all times by the civil legislation that the formalities required for a valid marriage have all to be in accordance with the Canon Law of the Greek Orthodox Church, i.e. lack of any impediment, publication of banns, marriage licence from the Bishop, presence of at least two witnesses and a clergyman in Holy orders⁽²⁾. The sacramental character which the Orthodox Church recognises in marriage is sanctioned by the Civil Code, as it has always been since the Byzantine era, in that marriage is inexistent (άυυηδιστατος) without the liturgical rite⁽³⁾. Consequently purely civil marriage in Greece has never been introduced although the matter was raised several times in the past⁽⁴⁾.

1) Lacey, op. cit. pp. 186-187, see also chapter 1 of Part I, p. 57f

2) Article 1367 of the 1940 Civil Code, Alivisatos, op. cit. p. 724; Athenagoras Kokkinakis, op. cit. pp. 72ff

3) Articles 1367 & 1371, Alivisatos, ibid. p. 724; see also chapter 1 of Part II p. 156

4) For the more recent moves for the introduction of civil marriage in Greece see chapter 5 of Part II pp. 256ff

As far as indissolubility is concerned, the Church of England sees marriage as a lifelong and indissoluble union of one man with one woman to the exclusion of all others⁽¹⁾, consequently she has never accepted divorce with the right of re-marriage⁽²⁾ and this, unlike the civil law of England which in 1857 introduced the dissolution of marriage on the ground of adultery by the wife, or on the ground of aggravated adultery from the part of the husband⁽³⁾. Further reviews of the divorce law in England were carried out by the Matrimonial Causes Acts of 1937, which extended the grounds for divorce on the basis of the 1909 Report of the Royal Commission and by the 1969/1971 Acts, which introduced the irretrievable breakdown and are now consolidated in the 1973 Matrimonial Causes Act⁽⁴⁾.

For the Greek Orthodox Church also marriage is a lifelong union with only death as its natural end⁽⁵⁾. However as it has been expounded in more details in another place⁽⁶⁾, the Greek Church on the evidence of the Matthean exception accepts adultery as the only ground of divorce with the right of re-marriage. During the Byzantine era when the Church was invested with the

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- 1) Canon B 30, The Canons of the Church of England, op. cit. p. 22; see also Appendix
 - 2) See chapter 4 of Part I pp. 95ff
 - 3) ibid. pp. 97ff
 - 4) ibid. pp. 103 and 130
 - 5) Alivisatos, Marriage and Divorce, op. cit. p. 6
 - 6) see pp. 208ff

responsibility of giving legal status to marriage and was under the influence of the State she was obliged to accept an extension of the grounds of divorce by using her principle of Economy and compassion⁽¹⁾. Accordingly, after 1835 when jurisdiction over matters relating to divorce were transferred to the civil authorities, and following a civil court's decision, the Church remained obliged to pronounce also the spiritual dissolution of marriage⁽²⁾. It is important also to note here that despite the fact of the dissolution of marriage by the civil legislation both in England and Greece, yet the same legislations accept marriage, at the time it is contracted, as an indissoluble and life-long union⁽³⁾.

From the consideration of only these points of the civil and ecclesiastical legislations on marriage and divorce in England and Greece it is apparent that in both countries there has been an almost similar development. The administration of marriage law was at first in the hands of the Church, and the ecclesiastical courts were the only competent authority

1) See Appendix I on the notion of Economy according to the Greek Orthodox Church, p. 283

2) Article 55 para. 4 of the Constitutional Law of the Greek Church, No 671, 27 September 1943, Alivisatos, Holy Canons, op. cit. p. 564

3) Alivisatos, Marriage and Divorce, op. cit. p. 6
For the Church of England see the Preamble of the Form of Solemnization of Holy Matrimony, Appendix
For the civil conception of the life-long union of marriage see A Letter from the Registrar-General concerning civil marriage ceremonies in The Church and the Law of Nullity of Marriage, op. cit. p. 60

to settle matrimonial causes. But the situation changed when the jurisdiction over these matters was transferred to the civil courts.

In Greece the State took over from the Church only the responsibility of ^{de}solving the marriage by applying the ecclesiastical legislation which was developed during the Byzantine era, and tried to bring it up to date by various amendments and furthermore by recognising only the ecclesiastical form of marriage, according to the rite of the Greek Orthodox Church.

In England, the law of the Church has been substantially modified or even negatived by Parliamentary Statutes, the immediate effect of which was to create two different laws on the same subject - the canon and the statute. If the statute has been accepted and acted upon by ecclesiastical authorities, whether expressly or tacitly, it substituted then the old Canon Law. For example, the acceptance by ecclesiastical courts of Lord Hardwick's Marriage Act, invalidating all marriages not contracted in faciae ecclesiae, produced an alteration in the Canon Law, which accepted only the consent of the couple as the fundamental element of marriage⁽¹⁾. The acceptance of The Marriage Act of 1836, which introduced the civil

1) Lacey, op. cit. pp. 186-187

form of contract, restored the old principle of the Canon Law that marriages are valid though contracted outside the Church⁽¹⁾. Or again, the Canon Law of the Church of England did not regard the consent of parents to the marriage of a minor as essential, however, by Lord Hardwick's Act marriages without such consent were made void⁽²⁾. The ecclesiastical courts accepted this statute and issued decrees of nullity accordingly. It was in this way that the Canon Law became effected and altered in England. But where the Church refused to accept certain statutes, such as those connected with divorce and remarriage, her Canon Law remained in conflict with the civil legislation and thus Churchmen found themselves subject to two laws.

Another difference between England and Greece, which must be taken into consideration, if a realistic comparison is to be made, is that while in Greece over 90% of the population belong to the Greek Orthodox Church and, therefore the State can apply to them the ecclesiastical legislation, as amended in the course of time, without any protest from their part, the same thing does not apply in England. Here, the proportion of the members of the Church of England is certainly much lower, and although she is the established Church, the State finds

1) Canon B 36, The Canons of the Church of England, op. cit. p. 25; Lacey, op. cit. pp. 186-187

2) see chapter 1 of Part I p. 55f; Lacey, ibid. pp. 186-187

it difficult to enforce her Canon Law to a large number of people, who are not members of the established Church. This conflict between the civil and ecclesiastical legislation leads us to the theological implications which will be dealt with in the next chapter.

2. Theological implications on the law of Marriage and
Divorce in the Greek Orthodox Church
and the Church of England

The account of the law of marriage and divorce in the Greek Orthodox Church and the Church of England, presented in the previous pages of this dissertation, indicates that its development took place within the living theological traditions of these Churches which went back to Patristic theological interpretation of marriage, largely based on the Bible. Because it was customary for the Church Fathers to consult Holy Scripture in order to deal with pastoral questions, key texts, such as Genesis chapters 1-2; Matthew 5,31-32, 19, 3-12; John 2, 1-11; I Corinthians chapter 7; Ephesians 5, 22-33, provided the backbone of a Patristic theology of marriage and acquired a definite place in the current marriage rites used by both, the Greek Orthodox Church and the Church of England.

In Patristic thought marriage is not simply a social custom or a legal contract, but above all a gift of God, given to man in creation, reconstituted by Christ and linked with the life of the Church. So three fundamental elements making up the sacramental meaning of marriage may be distinguished.

- a) The institution of marriage i.e. God's creation and His blessing of man and woman in His image expressed in their conjugal bond.
- b) The renewal of marriage i.e. the couple's new life in Christ.
- c) The fulfilment of marriage i.e. the couple's sharing in the life of the Church.

With reference to the first element, the statement of Theodore the Studite that the first conjugal blessing is that of Adam and Eve by God⁽¹⁾ and that it is connected with the blessing of monogamous marriage⁽²⁾, may be recalled.

This view which is evident in the Anglican Form of Solemnization of Matrimony, is more so in the Orthodox marriage rite, both in its Betrothal and Crowning services. There God is acknowledged to be the Creator and Ordainer of marriage and is called to bless the conjugal bond of every new couple in the same fashion as He did in the case of Adam and Eve, and of other Old Testament couples, such as Abraham and Sarah, Isaac and Rebecca, Jacob and Rachel, and many others down to Zachariah and Elisabeth, who gave birth birth to the Forerunner⁽³⁾.

The Fathers view the conjugal bond of man and woman as a sacrament because it expresses the imago Dei, indeed

1) Genesis 1, 28 "καί εὐλόγησεν αὐτούς ὁ Θεός".

2) P.G. 99, 1092D - 1093C

3) see Appendix II pp. 316ff

the image of the Trinity⁽¹⁾.

As regards the second element, reference is made to the Lord Jesus Himself, Who, in His earthly ministry, not only acknowledged God as the Ordainer of marriage⁽²⁾, or confirmed the monogamous ideal⁽³⁾, but also blessed it with His presence and performance of His first miracle. This is recalled in the Orthodox Marriage service and made the basis of an epiclesis for a similar blessing⁽⁴⁾.

Thus marriage is seen as a life in Christ which redeems the couple and integrates it in the Church. This ecclesiastical integration of marriage is in fact the third element of its sacramental character. Marriage in the Church is given a concrete centre of renewal in the Holy Eucharist, as well as in the other blessings which the Church provides⁽⁵⁾.

To conclude then marriage is a sacrament in the sense that the two persons conjoined constitute the image of God by being united in the Holy Spirit with Christ and the life of His Body, the Church.

1) On this see the able discussion of D.S. Bailey, The Mystery of Love and Marriage, S.C.M. 1952, pp. 110ff.

2) By quoting Genesis 1, 27 and 2, 24 in Matthew 19,4; and Mark 10, 6

3) Mark 10, 6-9; Matthew 19, 4-6 " ὁ οὖν ὁ θεὸς συνέζευξεν ἄνθρωπος μὴ χωριζέτω".

4) See Appendix II pp. 315, 316 and 324

5) Apart from personal life of prayer, repentance, humility and righteous living, also the Church embraces the totality of the everyday life of the believer through various services and prayers. Thus there are Church blessings at the birth of a child, at its naming, at the excavation for the foundation of a home, at the moving into a new home or to a home for the first time, when starting a trip, or beginning a new project. For such services see the Book of Services Μικρὸν Εὐχολόγιον, ἔκδοσις Ἀποστολικῆς Διακονίας, Ἀθῆναι, 1962.

It is not therefore simply mutual consent as a legal notion, which constitutes the sacramental essence of Christian marriage, nor is it just the ceremonial rite in which couples are purely passive participants, but the actual grace of God which embraces the total being and life of the couple. As the Orthodox rite puts it, God Himself "is the Celebrant of the mystical and pure marriage"⁽¹⁾. Similarly the Anglican Form of Solemnization of Matrimony points to God as the One Who "has consecrated the state of Matrimony to such an excellent mystery, that in it is signified and represented the spiritual marriage and unity between Christ and His Church"⁽²⁾.

Christian marriage therefore is closely linked with Christ and the Church for both the Orthodox and the Anglican. A closer examination of this link, however, indicates divergencies between the Orthodox and the Anglican positions.

The Orthodox insist that no Orthodox member can constitute a marital bond without the Orthodox Church, which implies that Christ's act cannot be separated from His Church and therefore marriage ultimately rests on the Church as the stewardess of the grace of Christ,

1) See Appendix II p. 317

2) See Appendix III p. 335

and not simply on those who are conjoined.

An Orthodox member however can constitute a valid marriage with a non-orthodox provided that the marriage is effected within the Orthodox Church. This is allowed not only as a concession to human weakness, but also as a means of extending the grace residing in the Orthodox Church to those who are in part associated with her.

On the contrary the Anglican tradition seems to follow a different line of thought, in as much as it recognises (although it does not encourage it) the marriage of an Anglican contracted without her.

This implies that, in the case of an ecclesiastically solemnised non-Anglican marriage, the Anglicans recognise the validity of the Church which solemnises. Unless, the recognition of such a marriage is based simply on the consent of the couple and not on the blessing of God through the Church which is involved. If the later is the case⁽¹⁾ then the ecclesiastical and sacramental character of marriage is seriously relativised. It would seem right that the third element, at least, if not all three elements of the sacramental character of Christian marriage as expounded above, is rejected.

1) According to T.A. Lacey, op. cit. p. 201 this must be so, for he states that the Church deliberately rejected in the past the principle that when there is no consummation there is no marriage in favour of the doctrine that it is the consent which constitutes a marriage.

In the case of a civil marriage contracted by Anglicans the implications of its recognition seems to be as the above, i.e. consent constitutes an ecclesiastically valid marriage. In this light marriage loses its sacramental character and its theological, Christological and ecclesiological significance is essentially denied. However, the Anglican formularies of the solemnization of marriage and the Anglican attitude to divorce seem to imply belief in the sacramental nature of marriage. If this is so, then how are the two views to be reconciled? And how is this contradiction to be resolved without jeopardising the sacramental integrity of marriage?

No easy answer can be foreseen here in view of the Anglican discipline concerning marital problems, especially the allowance of 'divorced' parties to participate in the sacrament of Holy Communion without their divorce being accepted or redeemed through re-marriage in the Church. The Orthodox discipline in this case of allowing re-marriage on certain grounds and withholding participation in the divine communion for two or more years indicates the firm belief of the Orthodox Church in the sacramental nature of matrimony⁽¹⁾.

1) See the introductory rubric of the Book of Services (Εὐχολόγιον) on second marriage, which orders two years abstinence from Divine Communion for divorced people and five years for those contracting a third marriage, Εὐχολόγιον, op. cit. pp. 114ff. Also for the divergencies between the services of the first and second marriage see Appendix II pp. 325 ff

It is obvious then, that the Orthodox and Anglican theological stances concerning marriage, though closely similar on the general theoretical and ritual basis seem to diverge decisively on practical considerations. This divergence is quite intricate varying in accordance with particular cases, but the general difference seems to be the ultimate basis of the sacramental constitution of marriage. For the Orthodox this basis is God's act which includes the hierarchy God, Christ, Church, man-woman. For the Anglicans this basis seems to be the act of mutual consent between a man and a woman. Various hierarchies may be operative but are not always necessary.

Apart from the sacramental and constitutional aspect of marriage the Orthodox and Anglican traditions witness to its dynamic and evolutionary aspect. Marriage is a gift of being united into 'one'. It involves a task which in reality is a process. It is a life-long process of mutual cleaving and continually becoming 'one' at different levels, physical, emotional, mental and spiritual or personal.

The task can only be accomplished by God's grace and the couple's freely chosen and deliberate pursuit to overcome selfishness. Then the theological ideal of Ephesians 5 regarding marriage is transformed into empirical reality, manifesting the mystery of the union of Christ and the Church.

Marriage is the new life in Christ which involves the couple's care for continuous spiritual renewal and their effort to grow in full unison with Christ in the Holy Spirit and with each other as they grow in marital life, - that indeed is a great mystery.

The Anglican and Orthodox traditions can hardly disagree. But a theology of marriage beyond the theological truth and integrity must also deal with the practical problems of marriage as well. Indeed, the positive presentation of the integrity and truth of marriage is always indicative along side with the redemptive and healing accommodation (economic salvific action) to human weakness. The Church has a total pastoral responsibility toward marriage. Not merely to bless it and link it decisively with the great mystery of Christ and His Church but also to give guidance to couples toward well-chosen marriages, to strengthen the present ones and when marriages are broken, the Church's concern includes acceptance, support and help for those in pain, enabling those concerned to discover the will of God for their future.

The case of divorce or broken marriages is certainly a crucial issue and the Church cannot afford to leave it slip out of her hands. From ancient times, already in the divorce clause of Matthew (5,32; 19,9) and in the admission of the possibility of divorce by St. Paul (I Corinthians 7, 10-11) concessions are made

to human imperfection.

For these reasons the Greek Orthodox Church came reluctantly to permit, not without imperial pressure, a second and third marriage and had to struggle against permitting a fourth marriage. Such concessions could be interpreted as facile accommodations to human convenience, but the Church understands them rather as a redemptive refusal to abandon divorced persons in their weakness and/or sin. The Church knows that behind divorce there is a previous spiritual deadness in Christian marriage about which the Church cannot remain indifferent but requires to exercise her pastoral care.

Two Christian spouses who live the new life in Christ and who know of the power of forgiveness, love and reconciliation, cannot be divorced, at least not unless one or both of the spouses either impulsively or gradually becomes spiritually dead, which is a grave sin.

A Christian marriage, i.e. a true sacramental marriage in Christ - as long as both the spouses are in communion with Christ and do not abandon their faith and their commitment to Him - cannot fail, simply because Christ never fails! But if one of the parties or both become spiritually dead, are divorced and then seek second or third marriage, how can they then be re-married to others in Church without pastoral attention

for the cure of their spiritual deadness ?

This is why re-marriage is seen by the Orthodox as a beginning of repentance which leads the couple involved gradually to reintegrate themselves with the Church and be renewed and reconfirmed in the great mystery of salvation, man's union with God in and through Christ.

In the case of the Church of England the problem of divorce is viewed differently. The Anglican Church defends the integrity and truth of marriage and retains a rigorist or even purist attitude to divorce. The grounds for this rigorism seem to be biblical and legal, but pastoral and theological arguments are also advanced⁽¹⁾. What is not clear however, is why the Anglican Church seems to accept civil marriage⁽²⁾ only on the ground of mutual consent but not civil divorce ? If accommodation to State laws is appropriate in the one case why do Anglicans fail to work out an appropriate accommodation towards the other case ? From an Orthodox stand-point the Anglican attitude to divorce presents a similar incongruity with the Anglican understanding of the sacramental constitution of marriage. Again, from an Orthodox stand-point the most appropriate response for remarriage which holds together the Church's prophetic and pastoral responsibilities, would seem to be the availability of a service distinct from the normal Marriage Service, including a note of

1) cf Marriage, Divorce and the Church, op. cit. pp. 52ff; Marriage and the Church's Task, op. cit. pp. 69ff; To Have and to Hold, op. cit. pp. 181ff

2) Canon B 36, The Canons of the Church of England, op. cit. p.25

penitence for past sin as well as the vows of the new marriage and the hopes and prayers for the joy of the future. Provided that there is a serious spiritual struggle, these marriages too are sacramental. The Church should by all means be ready in every possible way to work for the redemption of such marriages. The Church has not only the responsibility and the duty but the authority and the grace to deal redemptively and savingly with broken marriages.

As a general conclusion, we would say that the Orthodox and Anglican approaches to Marriage and its problems can easily become a focal issue for comparing concretely the total ethos of these Churches and not least their respective theologies.

APPENDIX I

The Notion of "Economy" in the Greek Orthodox Church

From the very beginning of the Church's life the word Economy (Οικονομία) is very often mentioned in the ecclesiastical literature. Nearly all of the Fathers and teachers of the Church speak and give various information concerning it, including even instructions about its application⁽¹⁾. Also General and local Councils of the early Church often mention Economy in their canons and consider it as a necessary practical principle⁽²⁾.

In accordance with God's and our Saviour's will "that all men should be saved and come to the knowledge of the truth"⁽³⁾ and following St. Paul's mandate to pursue "in season and out of season" the Church's purpose, which is none other than the salvation of the faithful, her members, the Church have been using Economy in order to seek out and find "that which was lost"⁽⁴⁾.

1) Origen, De Principiis VI, P.G. 11, 167; Basil the Great, Epistolae clxxxviii, P.G. 32, 669; St. John Chrysostom, Homily in duodecim apostolos xlvi P.G. 60, 323; Epistolae ad Galatas P.G. 61, 641; Cyril of Alexandria Epistolae lxxvi P.G. 77, 353; for a more thorough reference to the Fathers on this subject see G.W.H. Lampe's A Patristic Greek Lexicon, Oxford, Clarendon Press, 1972 under the words Οικονομία, Οικονομία.

2) For a full list of Canons of General and Local Councils relevant to the subject see J. Kotsonis, Problems of Ecclesiastical Economy (in Greek) Athens, 1957 pp. 255-7

3) I Timothy 2,4

4) Matthew 18, 11; II Timothy 4,2

In the early Church the word Economy (Οικονομία)
at first meant :

- 1) The law and order established by God for the preservation of the universe;⁽¹⁾
- 2) the intervention of God by means of the Incarnation of His Son for the salvation of mankind, which had fallen from the order of creation through sin⁽²⁾;
- 3) the establishment of an ecclesiastical order which was a practical application in history of the saving principle of the Divine Economy established at the Incarnation. This Ecclesiastical Economy in the early Church had three primary aspects :
 - a) the management of financial and material possessions of the local community⁽³⁾;
 - b) the administration and regulation of the conditions of Church life and order according to circumstances, which meant the exact adherence to the letter of ecclesiastical law; but whenever the ultimate purpose of the Church i.e. the salvation of souls required it, in one way or another, it allowed deviation from the strict observance of the law⁽⁴⁾;

1) St. Basil Epistolae 5,2 P.G: 32, 240C;

2) Hebrew 3,5-6; The Ecclesiastical Economy, A Memorandum to the Holy Synod of the Church of Greece, presented by the Professors P. Bratsiotis, P. Trembelas, Constantine Mouratidis, Andreas Theodorou and Nicholas Bratsiotis, Athens, 1972 (in Greek) p. 13

3) Hence the appointment of a professional steward (Οικονόμος) see canon 26 of the Fourth General Council and canon 11 of the Seventh General Council in H. Alivisatos, Holy Canons, op. cit. pp. 58 and 126-127 respectively.

4) H. Alivisatos, Economy, From the Orthodox Point of View, Athens, 1949 (in Greek) pp. 48ff

c) the spiritual and moral welfare of the members of each local Church separately, as well as of all local Churches as a whole, hence the Apostles and their collaborators, and consequently their successors who continue their work are called 'stewards of the Word and of the Mysteries'⁽¹⁾.

From this last concept of the term, it seems that for the Fathers of the Church there were two main technical uses of Economy : one closely connected with the administration of penance and concerned with the individual sinner; the other and broader use, stressing the general well-being of the whole Church⁽²⁾.

In the first instance, Economy as administration of penance, is paralleled to the pastoral care, exercised by the Οἰκονόμοι τῶν ψυχῶν, extending to all aspects of Church life, but centering mainly on the administration of penance, on the cure of souls, on managing the terms of a penitent's reconciliation to the Church. Hence the most precise and most often encountered use of Economy as the apportionment or disposition of a penance⁽³⁾. For example the form-letter for commissioning a spiritual father or confessor, enjoins the recipient "to administer penance"⁽⁴⁾. What

1) Οἰκονόμοι τοῦ λόγου καὶ τῶν μυστηρίων, I Corinthians 4,1; Titus 1,7; I Peter 4,10.

2) John H. Erickson "Oikonomia' in Byzantine Canon Law" in Law, Church and Society, (Philadelphia) 1977, pp. 225-236

3) Gregory of Nyssa de anima et resurrectione P.G. 46,84A; St. Basil Epistolae 217, canon 62 P.G. 32, 800A; for more patristic references see Lampe's op. cit. pp. 940-944

4) Οἰκονομεῖν τὴν μετένοια cf. Erickson, op. cit. p. 227

this administering might involve can be seen in a typical canon from the canonical epistles of St. Basil the Great :

" He who has committed willful murder, but has afterwards repented, shall not be a partaker of the sacraments for twenty years. The twenty years will be thus administered in his case : for four years he ought to mourn standing outside the doors of the house of prayer, and beseeching the faithful as they enter to make supplication in his behalf, and confessing his own lawlessness. And after four years he shall be received among the hearers; and for five years he shall go out with them. For seven years he shall go out praying with those in prostration. For four years he shall only stand with the faithful, but he shall not participate in the oblation. But when those years have been accomplished, he shall share in the sacraments"(1).

With St. Basil's suggested arrangements followed to the letter Economy could be practiced in quite a mechanical but precise and strict manner. Hence, though the words οἰκονομία and ἀκριβεία often occur in the same context, no opposition between them need be involved⁽²⁾. At least one Byzantine writer speaks of economizing according to exactness⁽³⁾. But more frequent are texts suggesting that the prudent steward of souls will not rigidly keep to the prescribed terms of public penance, but will consider the circumstances of the case at hand⁽⁴⁾. Of the patristic texts regularly

1) St. Basil Epistle 217, canon 56 P.G. 32, 797A; cited in Erickson op. cit. p. 227.

2) ibid. p. 227

3) "κατὰ τὴν τῶν κανόνων οἰκονομοῦμεν ἀκριβείαν", Nikitas Stathatos, Concerning the Canons, ed. J. Darrouzes, Nikitas Stathatos, Opuscles et Lettres, Source Chretiennes lxxxii (Paris 1961) p. 468, cited in Erickson, op. cit. p. 227

4) ibid. p. 227

cited as precedents for abandoning severity and for adopting 'philanthropy' in assigning penance, the following canon of St. Gregory of Nyssa may be quoted :

" For those who have proved the more zealous in their conversion and who show by their manner of life their return to the good, he who manages things profitably by means of ecclesiastical οἰκονομία can shorten the length of time required for a hearer and make him more quickly a stander and then shorten the length of time again, restoring him more quickly to communion depending again on the state of the person being treated"(1).

Very typical also is the advice of St. John Chrysostom that one should avoid "unreasonable stiffness and severity which can do more harm, than clemency and moderation"(2).

It should be noted, however, that in many academic discussions and investigations the notion of Economy is interpreted in a variety of ways, which do not seem to escape the charge of abstraction and consequently of a certain lack of realism. Reference to such vague interpretations is given in a very interesting article by John Erickson⁽³⁾ who notes that there are convenient working definitions, according to which Economy is :

- " The liberal policy of compromise in matters not concerning the fundamentals of faith"(4), or
- " elasticity in the interest of the Christian Community"(5), or
- " the relaxing of disciplinary canons, regarding the performance of the sacraments, but not dogmas, for the benefit, possibly political, of the community"(6).

1) Gregory of Nyssa, canon 5, cited by Erickson, op.cit. p. 227
2) Chrysostom, Homily 57,1 in Genesis, P.G. 53, 548
3) John H. Erickson, "Oikonomia, in Byzantine Canon Law" in Law, Church and Society, (Philadelphia) 1977, pp. 225-236.
4) Dvornik, Photian Schism, pp. 8 and 45 cited in Erickson, op. cit. p. 225 5) ibid. p. 225 6) ibid. p. 225

Yet, of the meanings of Οἰκονομία the most obvious one is the most often ignored in discussions of the concept of Economy, namely, that of management, arrangement, determination, in the strictly literal sense. For in the last analysis Οἰκονομία implies the idea of stewardship, of management on behalf of another, of a superior, ultimately of God. Hence it is implied to be prudent and responsible management. This human management (economy) should imitate the divine Economy. It is God, Who arranges all for the purpose of man's salvation and eternal well-being; and man, fashioned after the image and likeness of God, is called to imitate this divine activity⁽¹⁾.

Therefore, Οἰκονομία so applied serves not simply as relaxation or compromise allowing a certain elasticity in the application of the Church's law, but as a vital guiding principle of theomimetic stewardship⁽²⁾. In this connection very appropriate is the following reference from a letter of Patriarch Nicholas Mystikos to Pope Anastassius III, denouncing Rome's role in the affair of the fourth marriage of Emperor Leo VI⁽³⁾ :

" Οἰκονομία, he says, is a concession unto salvation, saving him who has sinned, stretching out the arm of help, and lifting up the fallen from his fall; not permitting him to lie where he has fallen, nor rather pushing him toward a miserable pit. Οἰκονομία is an imitation of the divine mercy; a snatching out of the jaws of the beast that howls against us ... But he who still commits the sin is by no means snatched away; but only he who by the divine expedient of this Οἰκονομία puts himself far off from sin, and avoids its pursuit of him"⁽⁴⁾.

1) Erickson, op. cit. p. 226 2) ibid. p. 228

3) For more about this affair see p. 192 note 1.

4) Nicholas Mystikos, Epistle 32 P.G. 11, 212-213

In the second instance of the use of the word in a broader sense, stressing the general well-being of the whole Church, the words οἰκονομία, οἰκονόμος were paralleled with the words κυβέρνησις, κυβερνήτης⁽¹⁾, which meant steering as the pilot of a ship at sea, relaxing the tiller to avoid capsize, jettisoning what is less important to save the cargo, or steering between the scylla and charibdis of to-day⁽²⁾. In this sense of the word Economy occurs very often since the beginning of the Christian Church, and in particular it became a matter of necessity from the mid-fourth century on, when the Church was racked by theological controversies of schism and heresy.

Eulogius, Patriarch of Alexandria, who lived in the early seventh century wrote a special treatise on the subject, in which he expressed as follows the accepted understanding of οἰκονομία and its limits regarding the reconciliation between Chalcedonians and non-Chalcedonians :

1. " By 'Oikonomia' a temporary concession can be made in matters of practice to avoid irremediably damaging the peace of the Church.
2. " By 'Oikonomia' differences of terminology can be tolerated indefinitely.
3. " By 'Oikonomia' technical barriers to communion -an occasional heretic's name in the diptychs and other such vestiges of past error- can be ignored.

" But in all three cases, present purity of doctrine in no way may be compromised"(3).

1) Constitutiones Apostolorum 2.57,2 and 2.57,9; Cyril of Alexandria, Epistolae 58 P.G. 77, 321C

2) Erickson, op. cit. p. 230

3) P.G. 103, 953-956; Alivisatos, Economy, op. cit. pp. 58-9

It is in this sense of the word that the principle of 'Economy' was used in matters involving the restoration of clergy, who, in some way, were tainted by heresy. To this concept of 'Economy' appeals have increasingly been made in the long history of the Orthodox Church and in her relations with other Churches, particularly in cases of accepting the validity of non-Orthodox sacraments. In connection with the opinions of Greek theologians over the last hundred years on the principle of Economy a special investigation was made by F.J. Thomson⁽¹⁾ who briefly sums up the results of applying Economy in the following four main groups :

- (a) Economy can make what is invalid to be valid, and what is valid to be invalid (Androutsos, Dyovouniotis).
- (b) Economy can make what is valid to be invalid, but not what is invalid to be valid (Patriarch Meletios).
- (c) Economy cannot make what is valid to be invalid, but can make what is invalid to be valid (Georgiadis).
- (d) Economy can neither make what is valid to be invalid, nor what is invalid to be valid (Amvrasis, Alivisatos)(2).

Thomson considers that J. Kotsonis makes a most important point when he defines Economy roughly as any departure from the exactness of Canon Law⁽³⁾. This, however, seems to be a very general and vague statement, since Kotsonis is most specific when he states the

1) F.J. Thomson, Economy, An examination of the various theories of Economy held within the Orthodox Church, with special reference to the economical recognition of the validity of non-Orthodox sacraments, Journal of Theological Studies, vol. XVI, Pt 2, October 1966, pp. 368-420

2) ibid. p. 384

3) ibid. p. 383

particular aims for determining the use of Ecclesiastical

Economy as being :

1. the care of the sinner's soul;
2. the spiritual progress of the Church body;
3. the prevention of offending those who are weak in faith;
4. the peace and harmony among the Christians;
5. generally what is profitable to the Church, and lastly
6. the doing of what is pleasing before God (1).

Furthermore Kotsonis states that Ecclesiastical
Economy should be applied :

1. in cases of extreme need in which a departure from exactness is unavoidable;
2. when the Church by persisting in exactness would cause a great peril to be brought on herself; and
3. in cases of disciplinary character, when the offender should have shown a tendency to repent (2).

From this very brief survey it is obvious that Economy is of the utmost importance in the life and very existence of the Orthodox Church. For this reason the subject of Ecclesiastical Economy was included in the Agenda of the Preparatory Committee for the forthcoming Great Synod of the Orthodox Church. Accordingly an Inter-Orthodox Commission was appointed to prepare a draft Report on Ecclesiastical Economy, which was published in 1971 together with Reports on other subjects of the Agenda⁽³⁾. The document on Economy expressed the idea that precision (ἀκρίβεια) and Economy (ὀκνομία) are two principles by which the Church is administered, and was mainly referring to the application of Ecclesiastical Economy, which the

1) J. Kotsonis, Problems of Ecclesiastical Economy, (in Greek) Athens, 1957, p. 237

2) ibid. p. 238

3) Recommendations of the Inter-Orthodox Commission for the forthcoming Great Synod, Geneva, 1971

Orthodox Church used towards the Roman Church, the Oriental Churches and other Churches of the Reformation⁽¹⁾. Moreover it stated that the Church has great freedom in the application of Economy towards the Christians who are outside the Orthodox Church⁽²⁾.

In 1972, a Memorandum, signed by five Professors of the Faculty of Theology of the University of Athens, was submitted to the Holy Synod of the Church of Greece⁽³⁾, in which the Report of the Inter-Orthodox Commission on Ecclesiastical Economy was criticised as being confused on the essential characteristics of the issue and the Synod was warned that if the Document was finally accepted as it stands, it would generally be disastrous for the future rapprochement with the other Christian denominations and furthermore for the canonical order and general tradition of the Orthodox Church⁽⁴⁾.

In defence of the Document, the then Metropolitan of Aksum Methodios (presently the Archbishop of Thyateira), who was also a member of the Inter-Orthodox Commission, published a reply to the Professors of Theology in which

1) Metropolitan of Aksum Methodios, On the Ecclesiastical Economy, Athens, 1976 (in Greek with a summary in English pp. 133-138)

2) ibid. p. 134

3) The Ecclesiastical Economy, A Memorandum by five Professors, op. cit.

4) Third page of the Memorandum, not numbered.

he stated that :

" Ecclesiastical Economy has an importance and usefulness superior to the precise application of Canon Law. Since Ecclesiastical Economy derives its existence from the charitable attitude of God towards mankind, its application by the Church, should have a wider scope and a greater power to solve problems which cannot be administered otherwise. Beyond these, Ecclesiastical Economy, which depends on the Holy Spirit, Who dwells in the Church, has a creative mission in fields in which the formulated tradition of the Church cannot help"(1).

He further stated that the Document of the Inter-Orthodox Commission was not radical and it could not be so, because it will have successive improvements until its final form which will be given to it by the Great Council. It should represent the consciousness of the whole Orthodox Church and deal with the problems of the whole Christian world. The participation of all the Bishops of the Orthodox Church in this Great Council will certainly enrich the Document⁽²⁾.

Regarding the progress of the Inter-Orthodox Commission on the subject under consideration no more evidence has been available. The latest reference to Ecclesiastical Economy is made in the first volume on The Ecclesiastical Law , published in 1979 by the Protopresbyter E. Mantzouneas⁽³⁾ , who defines Economy as the deviation from the rigid and strict observance of the canonical and ecclesiastical order in matters

1) Metropolitan of Aksum Methodios, op. cit. p. 134

2) ibid. pp. 133-134

3) Protopresbyter Evangelos Mantzouneas, The Ecclesiastical Law, volume I, (in Greek) Athens, 1979

of Church administration, without any deviation from the dogmas. He gives the reasons for granting Economy as the salvation of the sinner and the general benefit and welfare of the Church⁽¹⁾ and states the authorities who grant Economy as being : (a) the Bishop or Metropolitan who has jurisdiction over a Diocese; (b) the governing authority immediately above the Bishop i.e. the provincial, local or Patriarchal Synod; and (c) the General Council, which is vested with supreme authority for the whole Orthodox Church⁽²⁾.

Taking the above into consideration we may restate the Orthodox view of Economy as follows :

In the Orthodox tradition Economy has both theological and practical connotations since Orthodoxy is Orthopraxy and vice versa. It is primarily connected with the saving Grace of the Trinity⁽³⁾ and the Incarnate Christ and also with the appropriation of this grace by man in and through the Church⁽⁴⁾. As such Ecclesiastical Economy is connected with the historic establishment and development of the Church. It comprises

1) Mantzouneas, op. cit. p. 62

2) ibid. pp. 63-66

3) Hippolytus, Contra Noetum 8, P.G. 10, 816B "καὶ ὅσον μὲν κατὰ τὴν δύναμιν εἰς ἑστὶν Θεός, ὅσον δὲ κατὰ τὴν οἰκονομίαν τριχῆς ἢ ἐπίδειξις" ; " ταύτην τὴν (τριχῆν) οἰκονομίαν παραδίδωσιν ἡμῖν καὶ ὁ μακάριος Ἰωάννης ... καὶ τοῦτου τὸν λόγον Θεὸν ὁμολογεῖ οὕτως λέγων : Δύο μὲν οὐκ ἔρω Θεούς, ἀλλ' ἢ ἓνα, πρόσωπα δὲ δύο οἰκονομία, τὴν δὲ τρίτην οἰκονομίαν τὴν χάριν τοῦ Ἁγίου Πνεύματος" ibid. P.G. 10, 821A.

4) Hippolytus, op. cit. P.G. 10, 808D; Epiphanius, Panarii P.G. 42, 736A

not only the historic ministry centered on the episcopate⁽¹⁾, but also the canonical regulations formulated by the Church and relating to matters of Christian faith, action and generally the Christian life in all its historical manifestations.⁽²⁾

In its canonical sense, Economy is marked by precision and exactness (ἀκριβεία), which maintains the integrity and primary truth of Christian reality. Yet, attachment to the exactness of the canons does not deprive Economy from its ultimate intention which is none other than the restoration and salvation of fallen man by the grace of God. As such, Economy often condescends to a standard other than that of the historic canons, not rejecting their integrity, but dealing responsibly and savingly with the needs owing to human weakness and sin. In this respect Economy is intimately linked on the one hand with the mystery of Grace, and on the other with the authority, which the Church enjoys in history, as the treasury and stewardess of that Grace.

1) St. Basil, De Spiritu Sancto 74, P.G. 32, 208A
" οἱ κατὰ διαδοχὴν τῆς Ἐκκλησίας οἰκονομήσαντες".

2) St. Basil, Epistle 144, P.G. 32, 593C; 32, 669B.

It is worth mentioning here that the early Fathers of the Church often use the term Economy, whilst the holy canons seem to prefer the terms philanthropy and leniency which bring out the soteriological character of ecclesiastical economy. In this respect see canons 5, 11, 12 of the Nicea First General Council (Alivisatos, op. cit. pp. 25ff) and canon 30 of Chalcedon (ibid. pp. 49ff) The term Economy is also used in the canons 29, 30, 37 and 102 of Trullo in the sense of condescension and of planning, arranging or managing. (Ibid. pp. 69ff) cf. Memorandum of the five Professors, op. cit. p. 14.

The Church as the authentic and living bearer of the Grace of the Trinity and of the Saviour Jesus Christ is not restricted by her historical actions, whether these are canons, customs or institutions, rather all these are bound to the Church, who keeps them, extends them, revises them, and in certain cases, cancels them, temporarily and restates them, in accordance with her soteriological aim and intention and by virtue of her authority rooted in the very Grace of God.

This is witnessed to by the Orthodox Ecclesiastical Economy concerning marriage and divorce. The canons, governing the practice of the Orthodox Church on marriage is an occasion for a deeper commitment to the Church and Christ⁽¹⁾. The union of man and woman in marriage is rooted in the union of Christ and His Church or the union of the Holy Trinity with the whole mankind. This is clearly revealed in the liturgical rite of marriage⁽²⁾, which begins with the acclamation of the Kingdom of the Triune God and includes prayers and acts, which make Christ and His Church the real perspective of the newly wedded. This precision, however, is often abrogated owing to human weakness and sinfulness. The situation is sometimes created when the integrity of marriage seems impossible to recover, and this

1) Ephesians 5, 22-23

2) see Appendix II pp. 301 ff and 311 ff

represents not only a breach in marriage but also with Christ and the Church, parallel to the breach created by an individual Christian who has fallen from his good standing in the Church. In these cases precision is not sufficient for restoring the fallen man in the Grace of Christ and His Church. Not because precision in general is insufficient, but rather is rendered such in the case of human sin and inadequacy. The Church could never justify herself as the dispenser of the Grace of God, if in her zealous effort to fulfill the letter of the law, she killed the spirit of love and mercy, by denying her lapsed people opportunity to repent and re-establish themselves in the life of Grace⁽¹⁾.

In the case of broken families the Church following the example of Moses grants divorce as the lesser evil⁽²⁾, not easily and gladly but hesitantly and sorrowfully and because of the hardness of heart of those who have fallen short of continuing living their married life in Christ and in the Grace of God. However, such concessions ought not to be interpreted as easy accommodations to human convenience but rather as a redemptive refusal to abandon divorced persons in their weakness and sin⁽³⁾.

1) Athenagoras Kokkinakis, op. cit. p. 50

2) ibid. p. 50

3) Th. Stylianopoulos, op. cit. p. 279

Another indication of how Orthodox ecclesiastical Economy operates is the case of mixed marriages. The Orthodox Church has always demanded unity of faith as a precondition to any marriage so that it would be a real fellowship of a religious life. If commitment to the same faith is not present, how is it possible to share and become 'one body' in Christ, since the fullest expression of such unity is participation in the mystery of the Eucharist? Through this sacrament the two people united in marriage share and taste of God's Kingdom. Because Eucharist is what makes the two people united in marriage members of the body of Christ. It is what gives to marriage its specifically Christian character⁽¹⁾. In other words it is in the Eucharist that marriage finds its fulfilment and becomes really, according to St. John Chrysostom, the Small Church or the Church at home⁽²⁾.

In the early Church when marriages were normally blessed during the course of the Eucharist, marriage between an Orthodox and a non-orthodox Christian was

1) Lewis J. Patsavos "Mixed marriages and the canonical tradition of the Orthodox Church", The Greek Orthodox Theological Review, vol. XXIII, No 3, 4 1978 pp. 243ff

2) St. John Chrysostom, Homily 20, 6 to the Ephesians "καὶ ἡ οἰκία γὰρ Ἐκκλησία ἐστὶ μικρά" ; P.G. 62, 143; "Ἐκκλησίαν ποιήσόν σου τὴν οἰκίαν" Homily 6, 2 Genesis P.G. 54, 607; "Ἐστω Ἐκκλησία ἡ οἰκία ἐξ ἀνδρῶν καὶ γυναικῶν συνεστηκυῖα. Μὴ γάρ ὅτι σὺ μόνος εἶ ὁ ἀνὴρ, μηδὲ ὅτι αὕτη μόνη ἐστὶν ἡ γυνή, νομίσης κῶλυμα εἶναι. Ὅπου γὰρ εἶσι δύο εἰς τὸ ἕμὸν ὄνομα, φησί, συνηγμένοι, ἕνεῖ εἰμι ἐν μέσῳ αὐτῶν" Homily 26, 4 Acts P.G. 60, 203

unheard of. It was not until the marriage ceremony was removed from the central act of worship -the Eucharist- that the term mixed marriages acquired meaning. When the Kingdom of Greece was established mixed marriages took place without, however, their ecclesiastical status being determined by law⁽¹⁾. Although tendencies towards the exercise of leniency were evident quite early, it was not until 1869 that the first signs of the Church's changing attitude appeared through the exercise of Economy⁽²⁾. Since the Grace of Christ and the Church always looks to the salvation of her members, a way had to be found, other than that indicated by the strict observance of the canons, which would redeem the situation and keep her members into the range of the saving Grace. Accordingly, such mixed marriages were permitted in deviation from the rigid rule, as a means of extending the Grace residing in the Orthodox Church also to those who were in part associated with her, provided, however, that the non-orthodox member would agree that the children born from such a marriage would be baptised and brought up in the Orthodox Church⁽³⁾. In this way, ecclesiastical Economy, as a special charisma of the Church, like precision, serves the same end of human

1) Lewis J. Patsavos, op. cit. pp. 248-249

2) see chapter 2 of Part II "Conditions and Impediments to Marriage according to the Canon Law of the Greek Orthodox Church and the Civil Law of Greece since 1850" p. 197

3) Mantzouneas, op. cit. p. 69

salvation by means of union with Christ and His Church and could be regarded as another way of distribution of the divine saving Grace.

In conclusion we may quote the Archbishop of Thyateira Dr. Methodios Fouyas in saying that :

"Ecclesiastical Economy is not the means of allowing the essence of the Church to be threatened by any situation, but of bringing such a situation into the canonical framework of the Church. Indeed, we may call Economy the special charisma of the Orthodox Church"⁽¹⁾.

1) Metropolitan of Aksum Methodios, op. cit. p. 135

APPENDIX II

(a) The liturgical structure of the rite of marriage
in the Greek Orthodox Church

Elaborate and rich in symbolic ritual the service of marriage in the Greek Orthodox Church is divided into two parts :

The first one is known as the betrothal service or the blessing of the rings ⁽¹⁾, during which, after a series of supplications and two short prayers, the priest blesses two rings which he places on the fourth finger of the right hand of the bride and the groom. The best man then, exchanges them by placing the bride's ring on the groom's finger and vice versa, repeating this three times.

Since pre-christian times rings have always been used as a token and a symbol of a mutual contract or promise ⁽²⁾. They also symbolised the material possessions that each partner brings into the contract. In the Christian Church the use of rings apart from symbolising the material and spiritual possessions they signify also the unbroken allegiance that the couple owe to each other, whilst the exchange of the rings by the best man symbolises that from now on the couple are going to share together in each other's material and spiritual possessions and that from now

1) 'Ακολουθία τῶν Μνηστρῶν ἢ τοῦ 'Αρραβῶνος, see pp. 311ff

2) Constantine Callinicos The Christian Temple (in Greek) Athens, 1958, p. 549

on the weaknesses of the one partner will be compensated for by the strength of the other⁽¹⁾.

The priest then offers a prayer asking that the betrothal or the mutual promise officially given through this act of exchanging the rings in front of the congregation present, may be proven true in faith, concord and love, referring to the use of ring as a sign of God's pledge to man⁽²⁾. The prayer adds the symbolism of the right hand : Moses' right hand was in fact God's hand which brought the waters of the Red Sea over the Egyptians⁽³⁾ and which is in fact nothing else than the power of God "making firm the foundations of the earth"⁽⁴⁾. The Church of God is called to be the contract's witness. For in that case God Himself pledges His blessing and support, and unfaithfulness to each other means for Christians a betrayal of God

1) Stylianopoulos, op. cit. pp. 250-257

2) Joseph received a ring from the Pharaoh of Egypt as a sign of his new power (Genesis 41,42); the King of Babylon with his ring sealed the lions' den where Daniel was thrown as a pledge of his faithfulness to the suffering prophet, a faithfulness which God endorsed by saving Daniel from the lions (Daniel 6, 17); Tamar before giving herself to Judah asked for his ring as a pledge of safety so that on the day she would be brought to trial before the same Judah, the ring would save her from the punishment due to harlots (Genesis 38, 18); finally in the parable of the prodigal son the ring is a sign of the father's regained favour for his lost son (Luke 15, 23). In the Christian tradition Clement of Alexandria (Paidaguoguos 3,11) reports that a ring was given to the woman as a sign of authority in the disposition of domestic affairs. Basically the rings are the visible pledge of the betrothal anticipating marriage. See also Symeon of Thessaloniki, P.G. 155,508AD; cf Stylianopoulos, op. cit. pp. 254ff

3) Exodus 15, 26

4) Psalm 102, 25

and a rejection of His promise to grant them a new integrated and wholesome life⁽¹⁾. So the betrothal service, as the Church understands it, is the marriage contract. It involves not only the couple themselves, but God Himself. Thus a betrothal solemnly celebrated in Church is more than a simple engagement. It represents the real bond of marriage, lacking only the ultimate sacramental fulfilment⁽²⁾. This is certainly why it is generally celebrated just before the crowning service itself. Against the theological meaning of marriage as an image of Christ's union with the Church, the betrothal (ἀππαβών) is theologically suggestive as the image of Christ's betrothal of the Church by the gift of the Holy Spirit - the gift of the Holy Spirit as a token of each believer's salvation, anticipating the future fullness of salvation in the messianic Kingdom⁽³⁾.

1) Meyendorff, op. cit. p. 36

2) This is the reason why canon 98 of the Council of Troullo stipulates: "He who brings to the intercourse of marriage a woman who is betrothed to another man who is still alive, is to lie under the charge of adultery". Amongst other Byzantine canonists who wrote commentaries on this canon emphasizing that betrothal and marriage are legally almost identical, Theodore Valsamon even refers to the example of St. Joseph and the Virgin Mary, who were only betrothed to each other, still the Angel called Mary, Joseph's wife (Matthew 1, 20). This also explains why, when the Church took charge of divorce procedures these had to be followed also by a couple who were not yet married, but only betrothed and wanted to break the betrothal. The authority of the Church to deal and handle all marital affairs was sanctioned by Emperor Alexios I Comnenos (1048-1118) who explicitly stated that betrothal could be broken only through divorce (P.G. 137, 802-803)

3) Stylianopoulos, op. cit. pp. 256-257

The second part of the marriage service which is called the proper marriage ceremony or the crowning service ⁽¹⁾ opens with Psalm 128 which was sung on the steps of Solomon's temple when the levites were entering the sanctuary on solemn feast days, and exhorts the joy of family life, the prosperity and peace which it brings to man, as the highest form of God's blessing ⁽²⁾.

The meaning of the marriage proper or crowning service is to integrate the bridal pair into the very mystery of God's Kingdom and Christ's love for His Church. Their mutual consent, having already been given in writing, when arranging the formalities of the marriage, and expressed publicly a little while ago through the act of exchanging the rings, undoubtedly is required as a vital condition but it is not the very content of the sacrament. After the doxological invocation (Blessed is the Kingdom of the Father ...) which is characteristic of the beginning of the sacramental rites in the Orthodox Church, the great litany of peace follows. The petitions specifically related to the couple begin with the significant reference to the

1) Ἀκολουθία τοῦ Στεφανώματος ἤτοι τοῦ Γάμου, Πικρὸν Εὐχολόγιον ἢ Ἀγιασματάριον, ἔκδοσις Ἀποστολικῆς Διακονίας τῆς Ἐκκλησίας τῆς Ἑλλάδος, Ἀθήναι 1962, p. 96
The earlier practice of an official dialogue between the priest and the couple regarding their mutual consent to be married and the verification of the absence of any marriage impediments is now usually omitted. For the earlier practice see Trembelas, op. cit. p. 20. The asking about the mutual consent is still recorded in the rubrics of the present-day Euchologion of the Church of Greece (ibid. p. 90). The coming of the couple to the Church for marriage, and all the previous arrangements and preparations, are assumed as indicating mutual consent. Stylianopoulos, op. cit. p. 251 2) Meyendorff, op. cit. p. 37

"communion in marriage"⁽¹⁾. These petitions offer prayers for :

- 1) the couple's salvation;
- 2) the blessing of their marriage as that in Cana of Galilee;
- 3) prudence, decency, self-control and happiness in having children and a blameless life;
- 4) the granting of all their requests leading to salvation.

Of the three prayers which follow, the first one is concerned about the creation of Adam and Eve, their blessing to multiply and dominate the earth and the indissolubility of their conjugal bond and continues with many references to God's blessings of Old Testament couples. The prayer then asks God/Christ⁽²⁾ to bless the couple's marriage as He blessed that in Cana of Galilee, thereby showing that lawful marriage and procreation from it is according to God's will. With regard to material goods, the prayer significantly asks that the couple may abound in them so that they may also share them with others in need. The second prayer refers to God as the Celebrant of mystical and pure marriage, the Law-giver of physical marriage, and the Provider of all spiritual and material blessings.

1) " τῶν νῦν συναντομένων εἰς γάμου κοινωνίαν" (those who are now being united in the (fellowship) communion of marriage).

2) As in the case of the betrothal prayers, so also in the prayers of the Crowning Service, a prayer often begins by addressing God and then clearly develops into an address of Christ without sharp differentiation. Stylianopoulos, op. cit. p. 259

God is asked to bless the couple by granting them concord of soul and body, possession of beautiful children, exaltation, fruitfulness, abundance of material goods so that they may carry out philanthropic deeds and that they may live according to God's will so that they may shine like stars in the eschatological Kingdom⁽¹⁾. In the third prayer God, the Author of marriage, is asked to conjoin, yoke or unite and crown⁽²⁾ the couple in the bond of marriage and to grant them offspring and happiness in children. As the service continues, at the conclusion of the third prayer the priest unites the right hands of the couple, placing the bride's right hand in the right hand of the groom, and this act symbolises the oneness of marriage.

Next follows the crowning service, during which after blessing the crowns the priest places them over the heads of the bride and the groom, and the best man then exchanges them three times by placing the bride's crown over the groom's head and vice versa⁽³⁾.

1) Stylianopoulos, op. cit. p. 260

2) ἀρμοςον, σύζευξον, στεφάνωσον, see Appendix II, p. 318

3) St. John Chrysostom mentions the custom of crowning the Christian spouses as follows : "Crown are placed on the heads of the spouses, as symbols of their victory for they were not overcome by lusty pleasures" (Homily 9 on I Timothy, P.G. 62, 546). Accordingly the custom is used till to-day as a symbol of glory and honour bestowed by the Church to the newlyweds, since they are considered victors, consecrated to the sacredness of conjugal love and to the ideals of Christian parenthood. The crowns are made either of natural flowers and leaves of olive or myrtle trees or of artificial lemon tree blossoms. After the Church ceremony the crowns are kept safely in a special place of the house near the Holy Icons, as symbols and reminders of the sacredness of marriage.

The crowning also signifies the royal dignity of the family life. The bride and groom are crowned in glory as potential parents and they are expected to rule their new small kingdom, i.e. their household and family in wisdom, justice and integrity according to the will of God.⁽¹⁾

Following the coronation, the spouses hear the word of God from the Holy Scriptures, which include the two most revealing sections of the New Testament related to marriage. The first lesson is from the fifth chapter of the epistle of St. Paul to the Ephesians, where he draws the analogy of the unity of husband and wife from the perfect and mysterious unity of Christ with the Church. The second lesson is from the Gospel of St. John (chapter 2, 1-11) where Christ's presence at the marriage in Cana of Galilee is recounted as well as His first miracle.

Together with the Scripture readings the sequence of the prayers and petitions which follow, the Lord's prayer and the partaking of a common cup, remind very vividly of the fact that the marriage service was originally performed during the Eucharistic liturgy⁽²⁾. This eucharistic context is emphasised

1) Stylianopoulos, op. cit. p. 261; Ath. Kokkinakis, op.cit. pp. 74-75

2) Meyendorff, op. cit. pp. 38-45; Stylianopoulos, ibid. p. 263

even more by the singing of the communion hymn⁽¹⁾ whilst the bridegroom and bride partake of the cup. The partaking of the common cup which replaced Holy Communion⁽²⁾ has its own symbolism in liturgical tradition. As the wine is both sweet and sometimes dry the partaking of the common cup symbolises the common life, destiny and responsibility which the spouses, now united into one bond, will have to share together in success and failure, in poverty and riches, in joys and sorrows. The use of the common cup is also a reminder of the first miracle that Christ did in Cana of Galilee.⁽³⁾

1) Κοινωνικόν , Trembelas, op. cit. pp. 60-69

2) It is not clear that the common cup as a liturgical custom in Christian marriages arises only after the marriage rite became detached from the Holy Eucharist and as a substitute for Holy Communion (Stylianopoulos, op. cit. p. 263). It seems that during several centuries both Holy Communion and the common cup were offered to the couple. Already a cup of milk and honey, immediately after the cup of Holy Communion, was given to the couple in the times of Tertullian and Hippolitus (late second and early third centuries), (Trembelas, ibid. p. 26). The codices of the marriage rite variously report Holy Communion, the common cup of wine, and also a cup of honey with almonds or walnuts. Some codices stipulate that Holy Communion is to be given "if the couple is worthy" (in one codex, only of the sacred Body; Stylianopoulos ibid. p. 263). Such is the practice which also Symeon of Thessaloniki reports as established practice during his time. For Symeon, "to be worthy" meant chiefly to be married for the first time. Second-marriage couples received only the common cup (Symeon of Thessaloniki, On Matrimony, P.G. 155, 512D-513A) For manuscript evidence and comments see P. Trembelas, op. cit. pp. 12, 25, 60-69; Stylianopoulos, op. cit. p. 263

The common cup is also offered in Jewish marriages according to their tradition. After drinking the wine the groom breaks the glass as a gesture of breaking all ties with other unlawful relations or as a reminder that even in their happiest moments, the Jewish believers must think and remember the destruction of the Temple of Solomon, C. Callinocos, op. cit. p. 654

After the common cup is offered the priest, holding the joined right hands of the bride and the groom, leads them in a circular procession around a small table which is in front of them, while he intones three hymns of St. John Damascene which refer to the prophecy of Isaiah about the virgin birth of Christ, to the Holy Martyrs who were crowned because of their victory in martyrdom, and to Christ as the boasting of the Apostles and the exaltation of the Martyrs. During this ceremonial procession the congregation showers the newlyweds with flower petals and rice as a token of their wishes to the bride and groom for health, happiness and fertility. As in the case of the rings, the circular procession at this point is symbolic of the eternity and emphasizes marriage as a permanent commitment. This is the last symbolic ritual of the service, signifying the completion of the sacrament, the official presentation of the newlyweds to the Christian community, and the joy of the Church for the unity of the two in one and for their dedication to the sacred duties of Christian parenthood and to the ideals of the Christian family. The conclusion of the marriage rite involves the final blessing of the bridal couple, the removal of the crowns from their heads, a final Trinitarian blessing and the dismissal.

It is in this Crowning service of the Greek Orthodox Church that the communion of marriage between a man and a woman is blessed by God. By first impression the prayers and readings give a certain precedence to the husband and seem also to place an accent on procreation. But the heart of marriage is the oneness of the husband and the wife (ἓν μέλος διὰ τῆς συζυγίας). This oneness established by God⁽¹⁾, confirmed by Christ⁽²⁾ and repeatedly invoked by the marriage rite is decisive : a oneness not only of body but of total life, a true and full κοινωνία γάμου. Only such emphasis on the bond of marriage as a sharing union can lead to a correct interpretation of the precedence of the husband and also of the accent on procreation. Marriage exists above all for its own sake as a full communion of two persons apart from all other considerations, including child-bearing and the mutual roles of husband and wife. In The context of the oneness of marriage, the precedence of the husband, as much as the submission of the wife, are also God's gifts⁽³⁾. But they are gifts deeply rooted in the total union of love where there is no room for exploitation or subjugation in either direction, but only welcome space for mutual obedience and selfless service.

1) Genesis 2, 24

2) Mark 10, 8-9

3) Stylianopoulos, op. cit. pp. 264-265

(b) The Order of the Sacrament of Marriage
in the Greek Orthodox Church

A) The Betrothal Service

1. Deacon : Master, give the blessing.
2. Priest : Blessed is our God, always now and ever,
and unto ages of ages.

Choir : Amen.

Deacon : In peace let us pray to the Lord.

Choir : Lord have mercy (repeated after each petition).

Deacon : For the peace that is from above, and for the
salvation of our souls, let us pray to the Lord.

For the peace of the whole world, for the
stability of the holy Churches of God and for
the union of all, let us pray to the Lord.

For this holy Temple, and for those who with
fear of God, faith and piety enter therein,
let us pray to the Lord.

For our Archbishop (name), the honourable
Presbytery, of the Diaconate in Christ and
for all the Clergy and Laity, let us pray to
the Lord.

For the servant of God (name of the bridegroom)
and for the handmaid of God (name of the bride)
who are now betrothed to each other, and for
their salvation, let us pray to the Lord.

That there may be granted unto them children
for the continuation of the race and for all
their petitions for salvation, let us pray
to the Lord.

That perfect and peaceful love and help may
descend upon them, let us pray to the Lord.

That they may be preserved in concord and
steadfastness of faith, let us pray to the
Lord.

That they may be blessed in concord and
steadfastness of faith, let us pray to the
Lord.

That they may be protected in blameless life
and behaviour, let us pray to the Lord.

That the Lord our God may grant unto them honourable marriage and an undefiled fellowship, let us pray to the Lord.

That we may be delivered from all tribulation, wrath, danger and necessity, let us pray to the Lord.

Protect us, save us, have mercy on us and preserve us O God by Thy grace.

Having commemorated our most holy, undefiled, ever-blessed and glorious Lady, ever-Virgin Mary, the Mother of God, with all the Saints, let us commend ourselves and one another and our whole life to Christ our God.

Choir : To Thee, O Lord.

Priest : For to Thee belong all glory, honour and worship, to the Father, and to the Son, and to the Holy Spirit, now and ever and unto ages of ages.

Choir : Amen.

Deacon : Let us pray

Choir : Lord have mercy.

3. Priest : O eternal God, Who has brought into unity those who were sundered, and has ordained for them an urge for an indissoluble bond, Who did bless Isaac and Rebecca and did make them heirs of Thy promise; bless also these Thy servants, guiding them unto every good work. For Thou art a merciful God, Who loves mankind, and to Thee we ascribe glory, to the Father, and to the Son, and to the Holy Spirit, now and ever and unto ages of ages.

Choir : Amen

Priest : Peace be to all.

Choir : And with thy spirit.

Deacon : Let us bow our heads unto the Lord.

Choir : To Thee, O Lord.

4. Priest : O Lord our God, Who has espoused the Church from among the gentiles as a pure virgin; bless these espousals and unite and protect these Thy servants in peace and concord. For to Thee belong all glory, honour and worship, to the Father, and to the Son and to the Holy Spirit, now and ever and unto ages of ages.

Choir : Amen.

Then taking the rings, the Priest raises his hand so as to reach the Groom's forehead and says :

5. The servant of God (name) is betrothed to the handmaid of God (name) in the name of the Father and of the Son and of the Holy Spirit. Amen. (three times)

Facing the Bride and raising his hand with the rings so as to reach the Bride's forehead, the Priest then says :

The handmaid of God (name) is betrothed to the servant of God (name) in the name of the Father and of the Son and of the Holy Spirit. Amen. (Three times)

He then places the rings on the right hands of the Bride and the Groom and whilst the best man is called to exchange the rings three times the Priest says the following prayer :

6. Deacon : Let us pray.

Choir : Lord have mercy.

Priest : O Lord our God, Who did accompany the servant of Patriarch Abraham to Mesopotamia, when he was sent to seek a wife for his lord Isaac, and by asking for water at a meeting by the well, Thou did reveal unto him that he should betroth Rebecca; do Thou bless also the betrothal of these Thy servants (name) and (name) and confirm the word of their promise. Strengthen them in the holy union which is from Thee; for Thou hast created male and female from the beginning and by Thee the woman is joined to the man for help and for the continuation of the human race. Thyself, O Lord our God, Who has sent forth truth upon Thine inheritance, and Thy promise unto Thy servants our fathers, even Thine elect ones from generation to generation ; Look upon Thy servant (name) and upon Thy handmaid (N.) and make firm their betrothal in faith and concord and truth and love. For Thou O Lord has suggested for a pledge to be given and be confirmed in all things. By a ring authority was given to Joseph in Egypt; by a ring Daniel was honoured in the land of Babylon; by a ring the sincerety of Tamar was revealed; by a ring our heavenly Father showed mercy to the Prodigal son; for He said "Place a ring in his right hand and bring the fatted calf, sacrifice it, and eat and make merry". Thy right hand, O Lord, made Moses to encamp in the Red Sea, and by the Word of Thy truth the heavens were established and the earth was well founded; and the right hand

of Thy servants shall be blessed also by Thy mighty word and by Thine upraised arm. Wherefore, O Lord, Thyself do Thou now bless this puttin-on of rings with a heavenly benediction, and let an Angel of the Lord go before them all the days of their life. For Thou art, He Who blesses and sanctifies all things and unto Thee we ascribe glory to the Father and to the Son and to the Holy Spirit, now and ever, and unto ages of ages.

Choir : Amen.

B) The proper Marriage Ceremony or The Crowning Service

The Priest and the Choir intone the following with the Refrain Glory to Thee, our God, Glory to Thee in between the verses :

Psalm (128)

7. Blessed are all they that fear the Lord.
Those who walk in His ways.
Thou shall eat the fruits of thy labours.
Blessed art thou, and happy shalt thou be.
Thy wife shall be as the fruitful vine;
upon the walls of thine house.
Thy sons like young olive-branches,
round about thy table.
Behold, thus shall a man be blessed,
that fears the Lord.
The Lord from out of Sion shall so bless thee,
that thou may enjoy the good things of
Jerusalem all the days of your life.
And may thou see the sons of your sons;
Peace upon Israel.

8. Deacon : Master give the blessing.

9. Priest : Blessed is the Kingdom of the Father, and of the Son and of the Holy Spirit, now and ever, and unto ages of ages.

Choir : Amen.

Deacon : In peace let us pray to the Lord.

Choir : Lord have mercy (Repeated after each petition)
For the peace that is from above, and for the salvation of our souls, let us pray to the Lord.

Deacon : For the peace of the whole world, for the stability of the holy Churches of God and for the union of all, let us pray to the Lord.

For this holy Temple, and for those who with fear of God, faith and piety enter therein, let us pray to the Lord.

For our Archbishop (N.), the honourable Presbytery, of the Diaconate in Christ and for all the Clergy and Laity, let us pray to the Lord.

For the servants of God (N. and N.) who are now joined together in the fellowship of marriage and for their salvation, let us pray to the Lord.

That this marriage may be blessed as the one in Cana of Galilee, let us pray to the Lord.

That they may be granted prudence and the fruit of the womb as is expedient for them, let us pray to the Lord.

That they may be happy with the sight of sons and daughters, let us pray to the Lord.

That they may be granted the enjoyment of virtuous children and an upright life, let us pray to the Lord.

That they may be granted as well as we all our petitions which are unto salvation, let us pray to the Lord.

That they as well as we may be delivered from all tribulation, wrath, danger and necessity, let us pray to the Lord.

Protect us, save us, have mercy on us and preserve us O God by Thy grace.

Commemorating our most holy, undefiled, ever-blessed and glorious Lady, ever-Virgin Mary, the Mother of God, with all the Saints, let us commend ourselves and one another and our whole life to Christ our God.

Choir : To Thee, O Lord.

Priest : For to Thee belong all glory, honour and worship to the Father and to the Son, and to the Holy Spirit, now and ever and unto ages of ages.

Choir : Amen.

Deacon : Let us pray.

Choir : Lord have mercy.

10. Priest : O most pure God, the Creator of all the universe, Who out of Your love towards mankind did transform the rib of our forefather Adam into a woman and blessed them and said "Increase and multiply and have dominion over the earth" and has made the twain one member by the conjugal union, and for this cause shall a man leave his father and mother and shall cleave to his wife and the two shall be one flesh, and those whom God has joined together let no man put asunder; Thou Who did bless Thy servant Abraham and opening the womb of Sarah did make him to be the father of many nations; Who did give Isaac to Rebecca, and blessed their offspring; Who did join Jacob unto Rachel, and from that union did generate the twelve Patriarchs; Who did unite Joseph and Asenath, giving unto them as the fruit for their procreation Ephraim and Manasses; Who did accept Zacharias and Elizabeth and did make their offspring to be the Forerunner; Who from the root of Jesse did produce according to the flesh, the ever-Virgin from whom Thou wast incarnate and born for the salvation of humankind; Who in Thine ineffable grace and manifold goodness hast come in Cana of Galilee to bless the marriage there and to manifest that the lawful conjugal union and childbearing is according to Thy will: Do Thou, the same all-Holy Master, accept this supplication from us, Thy servants, and as Thou were present there, so likewise be present here with Thine invisible presence; bless this marriage and grant to these Thy servants (N. and N.) a peaceful life, length of days, temperance, mutual love in the bond of peace, perpetual generation, the grace of bearing children, the unfading crown of glory. Make them worthy to see their children's children, Preserve the conjugal fellowship undefiled. Give them heavenly dew from above from above and abundance of earthly goods. Fill their houses with wheat and wine and oil and with every beneficence, that they may bestow in turn upon the needy ones; granting also unto those who are here present all those petitions which are for their salvation. For Thou art the God of mercy, compassion and love towards mankind, and to Thee we ascribe glory to the Father and to the Son and to the Holy Spirit, now and ever, and unto ages of ages.

Choir : Amen.

Deacon : Let us pray to the Lord.

Choir : Lord have mercy.

11. Priest : Blessed art Thou, O Lord our God, the Celebrant of the mystical and pure marriage and the Ordainer of the law of the physical marriage; the guardian of incorruption and the good Steward of our daily needs; Thyself, now, O Master, who in the beginning did create man and set him as king of the creation, and said : "It is not good for man to be alone upon the earth, let us make for him a helpmeet for him" and Thou did take one of his ribs and made woman; and when Adam saw her he said : "This is now bone of my bones and flesh of my flesh. She shall be called woman because she was taken out of her man. For this cause shall a man leave his father and mother and shall cleave to his wife and they two shall be one flesh" and "those whom God has joined together let no man put asunder"; Thyself now, O Master and Lord our God, send down Thine heavenly grace upon these Thy servants (N. and N.) and grant that this handmaid may in all things be subject unto her husband, and this Thy servant to be the head of the woman, that they may live according to Thy will. Bless them O Lord our God, as Thou did bless Abraham and Sarah; Bless them O Lord our God, as Thou did bless Isaac and Rebecca; Bless them, O Lord our God, as Thou did bless Jacob and all the Patriarchs. Bless them, O Lord our God, as Thou did bless Joseph and Asenath. Bless them, O Lord our God, as Thou did bless Moses and Sephora. Bless them, O Lord our God, as Thou did bless Joachim and Anna. Bless them, O Lord our God, as Thou did bless Zacharias and Elizabeth. Protect them, O Lord our God, as Thou did protect Noah in the Ark. Protect them, O Lord our God, as Thou did protect Jonah in the belly of the whale. Protect them, O Lord our God, as Thou did protect the three holy Children from the fire by sending upon them dew from heaven. And let that gladness come upon them which the blessed St. Helen had when she found the precious Cross. Be mindful of them, O Lord our God, as Thou were mindful of Enoch, Shem and Elijah. Be mindful of them, O Lord our God, as Thou were mindful of Thy holy Forty Martyrs, sending down upon them crowns from heaven. Be mindful, O Lord our God, of their parents who nourished them, for the prayers of parents make firm the foundations of houses. Be mindful, O Lord our God, of Thy servants in the Bridal party who have come together to share this joy. Be mindful, O Lord our God of

Thy servant (N.) and of Thy handmaid (N.) and bless them. Grant them the fruit of the womb, fair offspring, concord in souls and bodies. Exalt them like the cedars of Lebanon, as a fruitful vine. Bless their labors with products of the earth, that having sufficiency in all things, they may abound in every good work that is acceptable unto Thee. Grant them to see their children's children, like a newly-planted olive-orchard, round about their table, and having obtained favour in Thy sight, they may shine like the stars of heaven in Thee, O Lord our God, to whom belong all glory, power, honour and worship to the Father, Who is from everlasting and to Thy life-giving Spirit, now and ever, and unto ages of ages.

Choir : Amen.

Deacon: Let us pray to the Lord.

Choir : Lord have mercy.

12. Priest: O Holy God, Who made man from dust and from his rib did fashion a woman and joined with a helpmeet for him, for so it pleased Thy majesty that man should not be alone upon the earth, do Thou now, O Master, send down Thine hand from Thy holy dwelling place and conjoin(*) this Thy servant (N) and Thy handmaid (N), for by Thee woman is united to man. Join them in concord, crown them in one flesh, grant them the fruit of the womb and the enjoyment of fair offspring. For Thine is the might and Thine is the Kingdom and the power and the glory, of the Father and of the Son and of the Holy Spirit, now and ever and unto ages of ages.

Choir : Amen.

Then the Priest blesses the Crowns and turning to the Groom he raises the Crowns so as to reach the Groom's forehead and says :

13. The servant of God (N) is crowned for the handmaid of God (N) in the name of the Father and of the Son and of the Holy Spirit. Amen (repeating this three times).

Then turning to the Bride the Priest raises the Crowns so as to reach her forehead and says :

The handmaid of God (N) is crowned for the servant of God (N) in the name of the Father and of the Son and of the Holy Spirit. Amen (repeating this three times).

(*) At this point the Priest joins the right hands of the Bride and the Groom.

The Priest then placing the Crowns on the heads of the Groom and of the Bride intones the 5th verse of the 8th Psalm :

O Lord our God, crown them with honour and glory.

(repeated three times). In the meantime the best man standing behind the couple raises the Crowns and interchanges them over their heads three times. Then the reading of the first lesson follows.

Reader : Thou hast set upon their heads crowns of precious stones; they have asked for life from Thee; and Thou hast given them length of days (Psalm 21, verse 4).

Deacon : Wisdom.

14. Reader : The Lesson is from the Epistle of Paul to the Ephesians. (chapt. 5, 20-33)

Deacon : Let us attend.

Reader : Brethren, give thanks always for all things unto God and the Father, in the name of our Lord Jesus Christ, submitting yourselves one to another in the fear of God. Wives submit yourselves unto your own husbands, as unto the Lord; for the husband is the head of the wife, even as Christ is the head of the Church; and He is the Saviour of the body. Therefore as the Church is subject unto Christ, so let the wives be to their own husbands in everything. Husbands, love your wives, even as Christ also loved the Church, and gave Himself up for her, that He might sanctify her, cleansing her by the washing of water by the word, that He might present her unto Himself a glorious Church, not having spot or wrinkle or any such thing; but that she should be holy and without blemish. So ought men to love their wives, as their own bodies. He that loves his wife loves himself. For no man ever hated his own flesh, but nourishes and cherishes it, even as the Lord loves the Church; for we are members of His body and of His flesh and of His bones. For this cause shall a man leave his father and mother and shall cleave to his wife and they two shall be one flesh. This is a great mystery; but I speak concerning Christ and the Church. Nevertheless let every one of you in particular so love his wife even as himself; and the wife see that she reverence her husband.

Priest : Peace be to you.

Choir : Alleluia, Alleluia, Alleluia.

- Deacon : Wisdom. Let us attend to listen the Holy Gospel.
- Priest : Peace be with you all.
- Choir ; And with thy spirit.
15. Priest : The Lesson is from the Holy Gospel according to St. John. (chapt. 2, 1-11)
- Choir : Glory to Thee, O Lord, glory to Thee.
- Deacon : Let us attend.
- Priest : At that time, there was a marriage in Cana of Galilee; and the mother of Jesus was there. And both Jesus and His disciples were also invited to the marriage. And when they had no more wine the mother of Jesus said to Him : They have no wine. Jesus said unto her : Woman, what have I to do with thee ? mine hour is not yet come. His mother said to the servants : Do whatever He tells you. And there were set there six water-pot of stone, after the manner of the purifying of the Jews, containing two or three firkins apiece. Jesus said to the them : Fill the waterpots with water. And they filled them up to the brim. And he said to them : Draw out now and take it to the governor of the feast. And they bare it. When the governor of the feast had tasted the water that was made wine, and knew not whence it was (but the servants who drew the water knew) he called the bridegroom and said to him : Every man offers the good wine first, and when men have well drunk, then that which is worse. But you have kept the good wine until now. This was the beginning of miracles that Jesus did in Cana of Galilee, where he manifested his glory and His disciples believed on Him.
- Choir : Glory to Thee, O Lord, glory to Thee.
16. Deacon : Let us all say, with all our soul and with all our mind, let us say.
- Choir : Lord have mercy. (repeated after each petition)
- Deacon : O Lord Almighty, the God of our fathers, we beseech Thee, hearken and have mercy.
- Have mercy upon us O God, according to Thy great mercy, we beseech Thee, hearken and have mercy.

Furthermore we pray for mercy, life, peace, health and salvation of Thy servants (N) and (N) and for all those who have come together in this great Mystery, expecting Thine great and bountiful mercy.

For Thou art a merciful God, who loves mankind and to Thee we ascribe glory, to the Father and to the Son and to the Holy Spirit, now and ever and unto ages of ages.

Choir : Amen.

Deacon : Let us pray to the Lord.

Choir : Lord have mercy.

17. Priest : O Lord our God, Who in Thy saving providence did vouchsafe by Thy presence in Cana of Galilee to declare honourable the institution of marriage, do Thou now preserve in peace and concord Thy servants (N) and (N) whom it has pleased Thee to join together. Make their marriage to be honourable. Preserve in purity their conjugal fellowship and grant them that their marital life be spotless; and enable them to reach a ripe old age following in purity of heart Thy commandments. For Thou art our God, a God of mercy and salvation and to Thee we ascribe glory, together with Thine Father, who is from everlasting and with Thine all-Holy and kind and life-giving Spirit, now and ever, and unto ages of ages.

Choir : Amen.

18. Deacon : Protect us, save us, have mercy on us and preserve us, O Lord by Thy grace.

Choir : Lord have mercy.

Deacon : That the whole day may be perfect, holy, peaceful and sinless, let us pray to the Lord.

Choir : Grant this, O Lord (repeated after each petition)

Deacon : For an Angel of peace, a faithful guide and guardian of our souls and bodies, let us entreat the Lord.

For pardon and remission of our sins and transgressions, let us entreat the Lord.

For all things which are good and profitable to our souls and for the peace of the world, let us entreat the Lord.

That our last days may be Christian, painless, blameless and peaceful and for a good defence before the Judgement seat of Christ, let us entreat the Lord.

That we may pass the remaining time of our life in peace and repentance, let us entreat the Lord.

Having entreated for the unity of faith and for the fellowship of the Holy Spirit, let us commend ourselves and one another and our whole life to Christ our God.

- Choir : To Thee, O Lord.
- Priest : Enable us, O Master, to dare call upon Thee, our heavenly God and Father, in confidence and uncondemned, saying :
19. All together: Our Father, who art in heaven, hallowed be Thy name; Thy Kingdom come; Thy will be done on earth as it is in heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. And lead us not into temptation, but deliver us from evil.
- Priest : For Thine is the Kingdom, and the power, and the glory, of the Father and of the Son and of the Holy Spirit, now and ever and unto ages of ages.
- Choir : Amen.
- Priest : Peace be with you all.
- Choir : And with thy spirit.
- Deacon : Let us bow our heads unto the Lord.
- Choir : To Thee, O Lord.
- Deacon : Let us pray to the Lord
(The common cup is brought and the Priest blesses it)
20. Priest : O God, Who by Thy might has created all things and established the world and adorned the crown of all that were made by Thee, do Thou bless with a spiritual blessing this common cup which Thou grant to those who have been united in the fellowship of marriage. For Thy name is blessed and Thy kingdom is glorified of the Father and of the Son and of the Holy Spirit, now and ever, and unto ages of ages.
- Choir : Amen.
21. The Priest offers the common cup first to the Bridegroom and then to the Bride. While they sip three times the Choir intones the 13th verse of the 116 Psalm :
I will take the cup of salvation and call upon the name of the Lord.

When this is completed the Priest leads the Bridegroom and the Bride in a circular procession around the table (three times). The best man follows, placing his hands upon the crowns for protection. The Choir and the People intone the following hymns :

22. Rejoice, O Isaiah. The Virgin has conceived, and she gave birth to a Son, Emmanuel, both God and man. Orient is his name, whom magnifying we call the Virgin blessed.

Holy Martyrs, who have contended bravely and were crowned, entreat the Lord to have mercy on our souls.

Glory be to Thee, O Christ our God, the pride of the Apostles and the Martyrs' joy, whose preaching was the consubstantial Trinity.

23. Then the Priest places his hand upon the crown on the head of the Groom and says :

Be magnified, O Bridegroom, like Abraham, and be blessed like Isaac, and be fruitful like Jacob as thou go in peace, working in righteousness the commandments of God.

Then placing his hand upon the crown on the head of the Bride, the Priest says :

And thou, O Bride, Be magnified like Sarah, and rejoice like Rebecca, and be fruitful like Rachel, enjoying yourself with your own husband and observing the limits of the law, for in this way God is well pleased.

Deacon : Let us pray.

Choir : Lord have mercy.

24. Priest : O God, our God, who did go to Cana of Galilee, and blessed the marriage there, bless also these Thy servants whom in Thy providence hast joined in the fellowship of marriage. Bless their comings in and their goings out. Replenish their life with good things; and take up (*) their crowns into Thy Kingdom preserving them spotless, blameless and guileless, unto the ages of ages.

Choir : Amen.

(*) At this point the Priest removes the Crowns from the heads of the Bride and the Bridegroom and places them over the Gospel which is on the table.

- Priest : Peace be with you all
- Choir : And with thy spirit.
- Deacon : Let us bow our heads unto the Lord.
- Choir : To Thee, O Lord.
25. Priest : May the Father, the Son and the Holy Spirit, the all-Holy, consubstantial and life-giving Trinity, the one Divinity and Kingship, bless you, and grant to you length of life, fair offspring, progress in life and in faith, and may you be filled with all the earthly good things, and may to you be vouchsafed also the enjoyment of the promised blessings through the intercessions of the holy Mother of God and of all the Saints.
- Choir : Amen.
26. Priest : Glory to Thee, O God our hope, glory to Thee.
May Christ our true God, Who by His presence in Cana of Galilee declared marriage to be an honourable estate, through the intercessions of His most pure Mother, of the holy and glorious Apostles, of the holy God-crowned Kings and equal to the Apostles Constantine and Helen, of the holy martyr Procopius and of all the Saints, have mercy upon us and save us forasmuch as He is good and loves mankind.
- By the prayers of our holy Fathers, O Lord Jesus Christ, our God, have mercy upon us and save us.
- Choir : Amen.

(c) Concerning those who contract a second marriage in the Greek Orthodox Church

In the Prayer-Book of Services which is currently in use in almost all the Parishes of the Greek Orthodox Church⁽¹⁾ there are the following two rubrics just at the beginning of the Order of the Marriage Service regarding those who contract a second or third marriage :

Rubric 1 is by Patriarch of Constantinople Nicephorus the Confessor (806-815) :

" Whoever contracts a second marriage is not to be crowned, but is barred from Holy Communion for two years. Whoever contracts a third marriage is barred for five years"(2).

Rubric 2 From the answers of the blessed Metropolitan of Herakleia Nikitas regarding some inquiries made to him by Bishop Constantine :

" According to precision it was not customary to crown those entering a second marriage. However, the custom (tradition) of the Great Church does not observe these things; but crowns are used for both those entering second and third marriage, and no one ever was denounced for this, except being barred for one or two years from Holy Communion. But also the celebrant priest is not allowed to join the wedding reception, according to canon 7 of the Neocesarea Council"(3).

1) Μικρόν Εὐχολόγιον, ἔκδ. Ἀποστολικῆς Διακονίας, Ἀθῆναι, 1962

2) "Ὁ δὲ γάμος οὐ στεφανοῦται, ἀλλὰ καὶ ἐπιτιμᾶται μὴ μεταλαβεῖν τῶν ἀχράντων Εὐστηρίων, ἔτη δύο· ὁ δὲ τρίγαμος, πέντε"
ibid. p. 114

3) "Ἡ μὲν ἀκρίβεια τοὺς διγάμους οὐκ εἴωθε στεφανοῦν· ἡ δὲ τῆς Μεγάλης Ἐκκλησίας συνήθεια, τὰ τοιαῦτα οὐ παρατηρεῖται, ἀλλὰ καὶ τοῖς διγάμοις καὶ τριγάμοις τοὺς νυμφικούς στεφάνους ἐπιτίθει, καὶ οὐδεὶς οὐδέποτε παρά τοῦτο ἐνεκλήθη· πλὴν ἓνα ἢ δεύτερον χρόνον τῆς θείας εἴργονται Κοινωνίας. Ἀλλὰ καὶ τὸν ἱερολογήσαντα τοῦτους πρεσβύτερον, συνδειπνεῖν αὐτοῖς οὐ νενόμισται, κατὰ τὸν ζ' Κανόνα τῆς ἐν Νεοκαισαρείᾳ Συνόδου"

ibid. p. 114

(d) The Order of Service for those contracting
a second marriage in the Greek Orthodox Church (1)

Deacon : Master, give the blessing.

Priest : Blessed is our God, always now and ever,
and unto ages of ages.

Choir : Amen.

Reader : Holy God, Holy Almighty, Holy Immortal,
have mercy on us (three times).

Glory be to the Father and to the Son
and to the Holy Spirit, now and ever and
unto ages of ages. Amen.

All Holy Trinity have mercy upon us.
Lord wash away our sins. Master, pardon
our iniquities. Holy One, visit and heal
our infirmities for Thy name's sake.
Lord have mercy (three times).

Glory be to the Father and to the Son
and to the Holy Spirit, now and ever
and unto ages of ages. Amen.

Our Father, Who art in heaven, hallowed be
Thy name; Thy Kingdom come; Thy will be done
on earth as it is in heaven. Give us this
day our daily bread, and forgive us our
trespasses, as we forgive those who
trespass against us. And lead us not into
temptation, but deliver us from evil.

Priest : For Thine is the Kingdom, and the power,
and the glory, of the Father and of the Son
and of the Holy Spirit, now and ever and unto
ages of ages.

Choir : Amen.

(The Apolytikion (Collect) of the day is chanted).

Deacon : (The Litany, see p. 311)

In peace let us pray to the Lord.
For the peace that is from above ...
For the peace of the whole world ...
For this holy Temple ...
For our Archbishop ...
For the servants of God (N) and (N) and
for their protection and cohabitation in God,
let us pray to the Lord.

That they may live together well and in harmony,
let us pray to the Lord.

Protect us, save us, ...

Having commemorated our most holy, ...

1) 'Ακολουθία εἰς Δίγαμον, Μικρὸν Εὐχολόγιον, op. cit. p. 315

Priest : For to Thee belong all glory ...

Next follow section 3 (the blessing of the couple), section 4 (the blessing of the rings) and section 5 (the putting on of the rings) as in pp. 312-313

3. Priest : O eternal God, Who has brought into unity those who were sundered ...

4. Priest : O Lord, our God, Who has espoused the Church from among the gentiles ...

5. The servant of God (N) is betrothed ...
The handmaid of God (N) is betrothed ...

Sections 6 to 11 from pp. 313 - 318 are omitted and in their place the following two prayers are said :

Priest : O Master Lord, our God, Who cares for all and provides for all, Who knows the secrets of men and has the knowledge of all things, redeem our sins and forgive the trespasses of your supplicants, calling them to repentance and granting them forgiveness of transgressions, redemption of sins, forgiveness of voluntary and involuntary trespasses. Thou Who knowest the weakness of the human nature, the maker and creator, who forgave Raab and accepted the repentance of the tax-collector, do not count the sins of the ignorance of our youth. For if Thou consider iniquities, O Lord, who could stand before Thee, or who would be justified before Thy presence ? For Thou only art righteous, without sin, holy, all merciful, compassionate, Who has pity on the sins of men. Thou O Master, having accepted Thy servants (N) and (N) unite them in mutual love. Grant to them the restoration of the tax-collector, the tears of the repentant woman, the confession of the thief, so that through their whole hearted repentance, and fulfilling Thy commandments in harmony and peace they may become worthy of Thy heavenly Kingdom.
For Thou art the Steward of all and to Thee we ascribe glory, to the Father and to the Son and to the Holy Spirit, now and ever and unto ages of ages.

Choir : Amen.

Priest : Peace be to all.

Choir : And with Thy spirit

Deacon : Let us bow our heads to the Lord.

Choir : To Thee, O Lord.

Deacon : Let us pray to the Lord.

Priest : Lord Jesus Christ, Word of God, who was raised on the honourable and life-giving Cross, Who tore apart the writ against us, and has delivered us from the dynasty of the devil, forgive the iniquities of Thy servants; for not bearing the heat and the load of the day nor the flame of the flesh, they are now entering into second marriage union, as Thou hast ordained through Thine selected vessel, Paul the Apostle, who for us, the humble said that "it is better to marry in the Lord, than be aflame". Thyself, as kind and loving mankind, have mercy and forgive, wash away and pardon our trespasses; for Thou hast carried our weaknesses upon Thine shoulders* for no one is without sin not even if his life is for one day only, or without blemish except Thyself alone, Who without sin put on flesh and has granted to us the eternal impassibility. For Thou art the God of the repentants and to Thee we ascribe glory to the Father and to the Son and to the Holy Spirit now and ever and unto ages of ages.

Choir : Amen.

Following the above prayers the service continues from section 12 to the end of section 26, exactly as in the proper Order of the Sacrament of Marriage (1).

1) see pp. 318 - 324 Comparing the Order of the Service for a second marriage with the proper Order for the Sacrament of marriage, apart from the provision already mentioned about the bar of two years to participate in Holy Communion, the following differences may also be noticed :

1. The Order of the service for a second marriage begins with the acclamation "Blessed is our God always ..." (p. 326), without this being followed at a later stage with the doxological invocation "Blessed is the Kingdom of the Father ..." (section 9 p. 314) which is characteristic at the beginning of all the sacrament services in the Greek Orthodox Church.

2. Although both, the rings and the crowns are used also during the service for a second marriage, the Order of the service in this case is not clearly divided into two parts, as it is in the first case. See pp. 311 and 314; see also Euchologion (in Greek) printed in Venice, 1570 and Euchologion (in Greek) printed in 1619, pp. πδ' ff and οβ' ff in Cosin Library University of Durham, which include the above service and the provision for withholding the Holy Communion.

(e) The Order for Re-establishing a Dissolved Marriage (1)

Deacon : Master, give the blessing.

Priest : Blessed is our God, always now and ever,
and unto ages of ages.

Choir : Amen.

Glory to Thee, O Lord, glory to Thee.
Blessed is the man who fears the Lord,
for God is great and dreadful to all
those who surround him.
The Lord will endure His mercy for ever
and His testament is sincere.
Glory and riches in his house for the
hand of the Lord will stand by him
and His arm will protect him.
Thy wife shall be as the fruitful vine
upon the walls of thine house;
thy sons like young olive plants
round about thy table.
The Lord from our of Sion
shall so bless thee that thou
may enjoy the good things of Jerusalem
all the days of thy life.
Blessed be the name of the Lord
now and for ever.

Deacon : (The Litany, see p. 311)

In peace let us pray to the Lord.
For the peace that is from above ...
For the peace of the whole world ...
For this Holy Temple ...
For our Archbishop ...
For the servants of God (N) and (N) who
are re-establishing their marriage and for the
granting to them of life without blemish,
unreproachable conduct and blameless behaviour,
let us pray to the Lord.

For the granting to them of cohabitation in
concord and love, progress in good works
and length of days, let us pray to the Lord.

1) 'Ακολουθία ἐπὶ ἐπανασυστάσει Γάμου Διαζευχθέντων,
Μικρὸν Εὐχολόγιον, ἔκδ. 'Αποστολικῆς Διακονίας, Ἀθῆναι,
1962, pp. 129 ff

That they and we may be delivered from all tribulation ...

Protect us, save us, ...

Having commemorated our most holy ...

Priest : For to Thee belong all glory ...

Deacon : Let us pray to the Lord.

Choir : Lord have mercy.

Priest : Merciful Master, King of the ages, and Creator of everything, Who has destroyed the dividing wall of enmity and has granted peace to the human race, we beseech Thee and pray to Thee; look mercifully upon these Thy servants (N) and (N) and pour upon them your blessing. Restore the shaken peace and sow the seed of mutual love in their hearts. Grant them spiritual calmness and an unrepachable life so that being in a state of inner serenity they may enjoy their own riches and give glory to Thee, the only God of love, and the Father of our Lord Jesus Christ, to whom every glory, honour and worship is due, now and for ever and unto ages of ages. Amen.

Glory to Thee, O God, our hope, glory to Thee.

May Christ our true God, through the intercessions of His most pure Mother, through the power of the life-giving Cross, through the protection of the spiritual and heavenly angels, through the supplications of the glorious prophet and forerunner John the Baptist, of the glorious and all-praised Apostles, of the holy and glorious Martyrs, of the holy and pious ascetics, of the holy Martyr Procopius and of all the Saints, have mercy upon us and save us forasmuch as He is good and loves mankind.

By the prayers of our holy Fathers, O Lord Jesus Christ, our God, have mercy upon us and save us. Amen.

APPENDIX III

(a) The Canons of the Church of England
concerning marriage (1)

B 30 Of Holy Matrimony

1. The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union permanent and life-long, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help, and comfort which the one ought to have of the other, both in prosperity and adversity.
2. The teaching of our Lord affirmed by the Church of England is expressed and maintained in the Form of Solemnization of Matrimony, contained in the Book of Common Prayer.
3. It shall be the duty of the minister, when application is made to him for matrimony to be solemnised in the Church of which he is the minister, to explain to the two persons who desire to be married the Church's doctrine of marriage as herein set forth, and the need of God's grace in order that they may discharge aright their obligations as married persons.

B 31 Of certain impediments to marriage

1. No person who is under sixteen years of age shall marry, and all marriages purported to be made between persons either of whom is under sixteen years of age are void.
2. No person shall marry within the degrees expressed in the following Table, and all marriages purported to be made within the said degrees are void.

1) The Canons of the Church of England, promulgated by the Convocations of Canterbury and York in 1964 and 1969, London, S.P.C.K. 1969 pp. 22 -25

A Table of Kindred and Affinity

A man may not marry his

A woman may not marry with her

mother	father
daughter	son
adopted daughter	adopted son
father's mother	father's father
mother's mother	mother's father
son's daughter	son's son
daughter's daughter	daughter's son
sister	brother
wife's mother	husband's father
wife's daughter	husband's son
father's wife	mother's husband
son's wife	daughter's husband
father's father's wife	father's mother's husband
mother's father's wife	mother's mother's husband
wife's father's mother	husband's father's father
wife's mother's mother	husband's mother's father
wife's daughter's daughter	husband's son's son
wife's son's daughter	husband's daughter's son
son's son's wife	son's daughter's husband
daughter's son's wife	daughter's daughter's husband
father's sister	father's brother
mother's sister	mother's brother
brother's daughter	brother's son
sister's daughter	sister's son

In this Table the term 'brother' includes a brother of the half-blood, and the term 'sister' includes a sister of the half-blood.

This Table shall be in every Church publicly set up and fixed at the charge of the parish.

B 32 Of certain impediments to the solemnization
of matrimony

No minister shall solemnize matrimony between two persons either of whom (not being a widow or widower) is under twenty-one years of age otherwise than in accordance with the requirements of the law relating to the consent of parents or guardians in the case of the marriage of a person under twenty-one years of age.

B 33 Of the duty of the minister to inquire as to
impediments

It shall be the duty of the minister, when application is made to him for matrimony to be solemnized in the church or chapel of which he is the minister, to inquire whether there be any impediment either to the marriage or to the solemnization thereof.

B 34 Of requirements preliminary to the solemnization
of matrimony

1. A marriage according to the rites of the Church of England may be solemnized :

- a after the publication of banns of marriage ;
- b on the authority of a special licence of marriage granted by the Archbishop of Canterbury or any other person by virtue of the Ecclesiastical Licences Act, 1533 (in these Canons, and in the statute law, referred to as a 'special licence');
- c on the authority of a licence (other than a special licence) granted by an ecclesiastical authority having power to grant such a licence (in these Canons, and in the statute law, referred to as a 'common licence') ; or
- d on the authority of a certificate issued by a superintendent registrar under the provisions of the statute law in that behalf.

2. The Archbishop of Canterbury may grant a special licence for the solemnization of matrimony without the publication of banns at any convenient time or place not only within the province of Canterbury but throughout all England.

3. The Archbishop of each province, the Bishop of every diocese, and all others who of ancient right have been accustomed to issue a common licence may grant such a licence for the solemnization of matrimony without the publication of banns at a lawful time and in a lawful place within the several areas of their jurisdiction as the case may be ; and the Archbishop of Canterbury may grant a common licence for the same throughout all England.

B 35 Of rules to be observed as to the preliminaries
and to the solemnization of Holy Matrimony

1. In all matters pertaining to the granting of licences of marriage every ecclesiastical authority shall observe the law relating thereto.
2. In all matters pertaining to the publication of banns of marriage and to the solemnization of matrimony every minister shall observe the law relating thereto, including, so far as they are applicable, the rules prescribed by the rubric prefixed to the office of Solemnization of Matrimony in the Book of Common Prayer.
3. A marriage may not be solemnized at any unseasonable hours but only between the hours of eight in the forenoon and six in the afternoon.
4. Every marriage shall be solemnized in the presence of two or more witnesses besides the minister who shall solemnize the same.
5. When matrimony is to be solemnized in any church, it belongs to the minister of the parish to decide what music shall be played, what hymns or anthems shall be sung, or what furnishings or flowers should be placed in or about the church for the occasion.

B 36 Of a service after civil marriage

1. If any persons have contracted marriage before the civil registrar under the provisions of the statute law, and shall afterwards desire to add thereto a service of Solemnization of Matrimony, a minister may, if he see fit, use such form of service, as may be sanctioned by lawful authority, in the church or chapel in which he is authorized to exercise his ministry : Provided first, that the minister be duly certified that the civil marriage has been contracted, and secondly that in regard to this use of the said service the minister do observe the Canons and regulations of the Convocations for the time being in force.
2. In connection with such a service there shall be no publication of banns nor any licence or certificate authorizing a marriage; and no record of any such service shall be entered by the minister in the register books of marriages provided by the Registrar General.

(b) The Form of Solemnization of Matrimony⁽¹⁾

(According to the 1662 Book of Common Prayer)

First the Banns of all that are to be married together must be published in the Church three several Sundays, during the time of Morning Service, or of Evening Service, (if there be no Morning Service) immediately after the second Lesson; the Curate saying after the accustomed manner,

I PUBLISH the Banns of Marriage between N. of --- and N. of ---. If any of you know cause, or just impediment, why these two persons should not be joined together in Holy Matrimony, ye are to declare it. This is the first (second, or third) time of asking.

And if the persons that are to be married dwell in divers Parishes, the Banns must be asked in both Parishes; and the Curate of the one Parish shall not solemnize Matrimony betwixt them, without a Certificate of the Banns being thrice asked, from the Curate of the other Parish.

At the day and time appointed for solemnization of Matrimony, the persons to be married shall come into the body of the Church with their friends and neighbours; and there standing together, the Man on the right hand, and the Woman on the left, the Priest shall say,

DEARLY beloved, we are gathered together here in the sight of God, and in the face of this congregation, to join together this Man and this Woman in holy Matrimony; which is an honourable estate, instituted of God in the time of man's innocency, signifying unto us the mystical union that is betwixt Christ and His Church; which holy estate Christ adorned and beautified with his presence, and first miracle that he wrought, in Cana of Galilee; and is commended of Saint Paul to be honourable among all men; and therefore is not by any to be enterprised, nor taken in hand, unadvisedly, lightly, or wantonly, to satisfy men's carnal lusts and appetites, like brute

1) The Book of Common Prayer, and administration of the Sacraments and other rites and ceremonies according to the use of the Church of England, Oxford, Printed at the University Press, n.d. pp. 362-373

beasts that have no understanding; but reverently, discreetly, advisedly, soberly, and in the fear of God; duly considering the causes for which Matrimony was ordained.

First, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name.

Secondly, It was ordained for a remedy against sin, and to avoid fornication; that such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's body.

Thirdly, It was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity. Into which holy estate these two persons present come now to be joined. Therefore if any man can shew any just cause, why they may not lawfully be joined together, let him now speak, or else hereafter for ever hold his peace.

And also speaking unto the persons that shall be married, he shall say,

I REQUIRE and charge you both, as ye will answer at the dreadful day of judgement when the secrets of all hearts shall be disclosed, that if either of you know any impediment, why ye may not be lawfully joined together in Matrimony, ye do now confess it. For be ye well assured, that so many as are coupled together otherwise than God's Word doth allow are not joined together by God; neither is their Matrimony lawful.

At which day of Marriage, if any man do alledge and declare any impediment, why they may not be coupled together in Matrimony, by God's Law, or by the Laws of this realm; and will be bound, and sufficient sureties with him, to the parties; or else put in a Caution (to the full value of such charges as the persons to be married do thereby sustain) to prove his allegation: then the solemnization must be deferred, until such as the truth be tried.

If no impediment is alledged, then shall the Curate say unto the Man,

N. WILT thou have this Woman to thy wedded wife, to live together after God's ordinance in the holy estate of Matrimony? Wilt thou love her, comfort her, honour, and keep her in sickness and in health; and, forsaking all other, keep thee only unto her, so long as ye both shall live?

The Man shall answer,

I will.

Then shall the Priest say unto the Woman,

N. WILT thou have this Man to thy wedded husband, to live together after God's ordinance in the holy estate of Matrimony? Wilt thou obey him, and serve him, love, honour, and keep him in sickness and in health; and, forsaking all other, keep thee only unto him, so long as ye both shall live?

The Woman shall answer,

I will.

Then shall the Minister say,

Who giveth this Woman to be married to this Man?

Then shall they give their troth to each other in this manner.

The Minister, receiving the Woman at her father's or friend's hands, shall cause the Man with his right hand to take the Woman by her right hand, and to say after him as followeth.

I N. take thee N. to my wedded wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance; and thereto I plight thee my troth.

Then shall they loose their hands; and the Woman with her right hand taking the Man by his right hand, shall likewise say after the Minister,

I N. take thee N. to my wedded husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love, cherish, and to obey, till death us do part, according to God's holy ordinance; and thereto I give thee my troth.

Then shall they again loose their hands; and the Man shall give unto the Woman a Ring, laying the same upon the book with the accustomed duty to the Priest and Clerk. And the Priest, taking the Ring, shall deliver it unto the Man, to put it upon the fourth finger of the Woman's left hand. And the Man holding the Ring there, and taught by the Priest, shall say,

WITH this Ring I thee wed, with my body I thee worship, and with all my worldly goods I thee endow: In the Name of the Father, and of the Son, and of the Holy Ghost. Amen

Then the Man leaving the Ring upon the fourth finger of the Woman's left hand, they shall both kneel down; and the Minister shall say,

Let us pray.

O ETERNAL God, Creator and Preserver of all mankind, Giver of all spiritual grace, the Author of everlasting life; Send thy blessing upon these thy servants, this man and this woman, whom we bless in thy Name; that, as Isaac and Rebecca lived faithfully together, so these persons may surely perform and keep the vow and covenant betwixt them made, (whereof this Ring given and received is a token and pledge,) and may ever remain in perfect love and peace together, and live according to thy laws; through Jesus Christ our Lord. Amen.

Then shall the Priest join their right hands together, and say,

Those whom God hath joined together let no man
put asunder.

Then shall the Minister speak unto the people.

FORASMUCH as N. and N. have consented together in
holy wedlock, and have witnessed the same before God
and this company, and thereto have given and pledged
their troth either to other, and have declared the
same by giving and receiving of a Ring, and by joining
of hands; I pronounce that they be Man and Wife together.
In the Name of the Father, and of the Son, and of the
Holy Ghost. Amen.

And the Minister shall add this Blessing.

GOD the Father, God the Son, God the Holy Ghost, bless,
preserve, and keep you; the Lord mercifully with his
favour look upon you; and so fill you with all
spiritual benediction and grace, that ye may so live
together in this life, that in the world to come ye
may have life everlasting. Amen.

Then the Minister or Clerks, going to the Lord's Table,
shall say or sing this Psalm following.

Beati omnes. Psalm 128.

BLESSED are all they that fear the Lord:
and walk in his ways.

For thou shalt eat the labour of thine hands:
O well is thee, and happy shalt thou be.

Thy wife shall be as the fruitful vine :
upon the walls of thine house;

Thy children like the olive-branches :
round about thy table.

Lo, thus shall the man be blessed :
that feareth the Lord.

The Lord from out of Sion shall so bless thee :
that thou shalt see Jerusalem in prosperity all
thy life long ;

Yea, that thou shalt see thy children's children :
and peace upon Israel.

Glory be to the Father, and to the Son,
and to the Holy Ghost;

As it was in the beginning is now, and ever
shall be : world without end. Amen.

or this psalm.

Deus misereatur. Psalm 67.

GOD be merciful unto us, and bless us :
and shew us the light of his countenance,
and be merciful unto us.

That thy way may be known upon earth :
thy saving health among all nations.

Let the people praise thee, O God :
yea, let all the people praise thee.

O let the nations rejoice and be glad :
for thou shalt judge the folk righteously,
and govern the nations upon earth.

Let the people praise thee, O God :
yea, let all the people praise thee.

Then shall the earth bring forth her increase :
and God, even our own God, shall give us his blessing.

God shall bless us :
and all the ends of the world shall fear him.

Glory be to the Father, and to the Son :
and to the Holy Ghost ;

As it was in the beginning, is now
and ever shall be : world without end. Amen.

The Psalm ended, and the Man and the Woman
kneeling before the Lord's Table, the Priest standing
at the Table, and turning his face towards them,
shall say,

Lord, have mercy upon us.

Answer. Christ, have mercy upon us.

Minister. Lord, have mercy upon us.

OUR Father, which art in heaven, Hallowed be thy Name. Thy kingdom come. Thy will be done, in earth as it is in heaven. Give us this day our daily bread. And forgive us our trespasses. As we forgive them that trespass against us. And lead us not into temptation; But deliver us from evil. Amen.

Minister. O Lord, save thy servant,
and thy handmaid;

Answer. Who put their trust in thee.

Minister. O Lord, send them help from thy holy place;

Answer. And evermore defend them.

Minister. Be unto them a tower of strength,

Answer. From the face of their enemy.

Minister. O Lord, hear our prayer.

Answer. And let our cry come unto thee.

Minister

O GOD of Abraham, God of Isaac, God of Jacob, bless these thy servants, and sow the seed of eternal life in their hearts; that whatsoever in thy holy Word they shall profitably learn, they may in deed fulfil the same. Look, O Lord, mercifully upon them from heaven, and bless them. And as thou didst send thy blessing upon Abraham and Sarah, to their great comfort, so vouchsafe to send thy blessing upon these thy servants; that they obeying thy will, and always being in safety under thy protection, may abide in thy love unto their lives' end; through Jesus Christ our Lord. Amen.

This Prayer next following shall be omitted,
where the Woman is past child-bearing.

O MERCIFUL Lord, and heavenly Father, by whose gracious gift mankind is increased; We beseech thee, assist with thy blessing these two persons, that they may both be fruitful in procreation of children, and also live together so long in godly love and honesty, that they may see their children christianly and virtuously brought up, to thy praise and honour; through Jesus Christ our Lord. Amen.

O GOD, who by thy mighty power hast made all things of nothing; who also (after other things set in order) didst appoint, that out of man (created after thine own image and similitude) woman should take her beginning; and, knitting them together, didst teach that it should never be lawful to put asunder those whom thou by Matrimony hadst made one: O God, who hast consecrated the state of Matrimony to such an excellent mystery, that in it is signified and represented the spiritual marriage and unity betwixt Christ and his Church; Look mercifully upon these thy servants, that both this man may love his wife, according to thy Word, (as Christ did love his spouse the Church, who gave himself for it, loving and cherishing it even as his own flesh,) and also that this woman may be loving and amiable, faithful and obedient to her husband; and in all quietness, sobriety, and peace, be a follower of holy and godly matrons. O Lord, bless them both, and grant them to inherit thy everlasting kingdom; through Jesus Christ our Lord. Amen.

Then shall the Priest say,

ALMIGHTY God, who at the beginning did create our first parents, Adam and Eve, and did sanctify and join them together in marriage; Pour upon you the riches of his grace, sanctify and bless you, that ye may please him both in body and soul, and live together in holy love unto your lives' end. Amen.

After which, if there be no Sermon declaring the duties of Man and Wife, the Minister shall read as followeth.

ALL ye that are married, or that intend to take the holy estate of Matrimony upon you, hear what the holy Scripture doth say as touching the duty of husbands towards their wives, and wives towards their husbands.

Saint Paul, in his Epistle to the Ephesians, the fifth Chapter, doth give this commandment to all married men; Husbands, love your wives, even as Christ also loved the Church, and gave himself for it, that he might sanctify and cleanse it with the washing of water, by the Word; that he might present it to himself a glorious Church, not having spot, or wrinkle, or any such thing; but that it should be holy, and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth himself; for no man ever yet hated his own flesh, but nourisheth and cherisheth it, even as the Lord the Church : for we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife; and they two shall be one flesh. This is a great mystery; but I speak concerning Christ and the Church. Nevertheless, let every one of you in particular so love his wife, even as himself.

Likewise the same Saint Paul, writing to the Colossians, speaketh thus to all men that are married; Husbands, love your wives, and be not bitter against them.

Hear also what Saint Peter, the Apostle of Christ, who was himself a married man, saith unto them that are married; Ye husbands, dwell with your wives according to knowledge; giving honour unto the wife, as unto the weaker vessel, and as being heirs together of the grace of life, that your prayers be not hindered.

Hitherto ye have heard the duty of the husband toward the wife. Now likewise, ye wives, hear and learn your duties toward your husbands, even as it is plainly set forth in holy Scripture.

Saint Paul, in the aforementioned Epistle to the Ephesians, teacheth you thus; Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the Church: and he is the Saviour of the body. Therefore as the Church is subject unto Christ, so let the wives be to their own husbands in every thing. And again he saith, Let the wife see that she reverence her husband.

And in his Epistle to the Colossians, Saint Paul giveth you this short lesson; Wives, submit yourselves unto your own husbands, as it is fit in the Lord.

Saint Peter also doth instruct you very well, thus saying; Ye wives, be in subjection to your own husbands; that, if any obey not the Word, they also may without the Word be won by the conversation of the wives; while they behold your chaste conversation coupled with fear. Whose adorning,

let it not be that outward adorning of plaiting the hair, and of wearing of gold, or of putting on of apparel; but let it be the hidden man of the heart, in that which is not corruptible; even the ornament of a meek and quiet spirit, which is in the sight of God of great price. For after this manner in the old time the holy women also, who trusted in God, adorned themselves, being in subjection unto their own husbands; even as Sarah obeyed Abraham, calling him lord; whose daughters ye are as long as ye do well, and are not afraid with any amazement.

It is convenient that the new-married persons should receive the holy Communion at the time of their Marriage, or at the first opportunity after their Marriage.

APPENDIX IV

(a) English-Greek glossary of some terms used
in connection with the Law of Marriage and
Divorce

Abduction	'Απαγωγή-άρπαγή
Abortion	"Εκτρωσις-άμβλωσις
Abuse	'Υβρίζω
Adopt, to adoption	Υιοθετώ, υιοθεσία
Adultery, adulterer, adulteress	Μοιχεία, μοιχός, μοιχαλίσ
Affinity	'Αγχιστεία
Age, of majority, capacity to marry	'Ηλικία, ένηλικιώσεως, ίκανότητα γάμου
Alimony	Διατροφή
Ancestor	Πρόγονος
Appeal	"Εφεσις-άγωγή
Assault, corporal, cruelty	Κακομεταχειρισις, σωματική, σκληρότης
Attempt of reconciliation	'Απόπειρα συμφιλιώσεως
Authorisation, authorised	'Εξουσιοδοτησις, έξουσιοδοτημένος
Banns, publication of,	Προαναγγελία γάμου, δημοσλεύσις
Baptism	Βάπτισις
Best-man	Παράνυμφος-κουμπάρος

Bigamy, bigamist	Διγαμία Δίγαμος
Birth, to give birth	Γέννησις γεννώ
Book of Services, -Common Prayer	Εύχολόγιον
Bride	Νύμφη
Bridegroom	Νυμφίος-γαμβρός
Capacity, to marry	Ίκανότης πρὸς γάμον
Celibacy	Ἄγαμία
Certificate of marriage	Πιστοποιητικὸν γάμου-στεφανοχάρτι
Children, son daughter brother sister	Τέκνα υἱὸς θυγατέρα ἄδελφός ἄδελφή
Civil legislation	Ἀστικὴ Νομοθεσία
Civil marriage	Πολιτικὸς γάμος
Clandestinity	Λαθρογαμία
Cohabitation	Συμβίωσις
Collusion	Συμπαιγνία
Compensation	Ἀποζημίωσις
Conception	Σύλληψις
Concubinage	Παλλακεία
Condescention	Συγκατάβασις
Conditions	Ὅροι-προϋποθέσεις
Condonation	Ἄνοχη
Conduct	Διαγωγή
Confusion, of names of offspring	Σύγχυσις ὀνομάτων γονῆς

Connivance	Συνενοχή
Consanguinity	Συγγένεια ἐξ αἵματος
Consent, of the couple of the parents of the guardian of the adoptive parent	Συναίνεσις τοῦ ζεύγους τῶν γονέων τοῦ κηδεμόνου τῶν υἰοθετῶν γονέων
Conspiracy	Συνομοσία
Consummation of marriage	᾽Ολοκλήρωσις γάμου διὰ συνουσίας
Contract	Συμβόλαιον
Costs	᾽Εξοδα
Cousin first cousins	᾽Εξάδελφος πρωτεξαδέλφια
Crime	᾽Εγκλημα
Crowns crowning	Στέφανα στέφεις
Cruelty	Σκληρότης
Custody	᾽Επιτροπεία
Custom	᾽Εθιμον
Damages	᾽Αποζημίωσις
Death	Θάνατος
Deceit	᾽Απάτη
Declaration of legitimacy	Δήλωσις νομιμοποιήσεως
Decree Nisi	Τελεσιδικος ἀπόφασις διαζυγίου
Degree of relationship	Βαθμός συγγενείας
Descendent	᾽Απόγονος
Desertion malicious	᾽Εγκατάλειψις κακόβουλος
Deviation	᾽Απόκλισις
Discipline	Πειθαρχία

Disappearance	Ἀφάνεια
Dissolution	Διάλυσις
Divorce a mensa et thoro a vinculo grounds for,	Διαζύγιον ἀπὸ κοίτης καὶ τραπέζης ὀριστικῶν λόγοι διαζυγίου
Dowary	Προῖνα
Drunkenness	Μέθη
Duress	Βία
Economy	Οἰκονομία
Endure, to	Ἵπομένω
Engagement ring service	Ἄρραβώνας δακτυλίδι ἀκολουθία
Evidence	Ἀπόδειξις
Excuse	Πρόφασις
Family	Οἰκογένεια
Fear	Φόβος
Fine	Πρόστιμον
Forgiveness	Συγχώρησις-συγγνώμη
Foster Parents	Υἱοθέτες γονεῖς
Fraud	Δόλος
God-parent	Ἀνάδοχος
Guardian guardianship	Κηδεμῶνας κηδεμονεῖα
Heir	Κληρονόμος
High Court	Πρωτοδικεῖον
Holy Orders	Ἱερωσύνη
Husband	Ὁ σύζυγος
Illegitimate	Ἰδθός
Impediments absolute relative	Κωλύματα ἀπόλυτα σχετικὰ

Impotence	Ἄνικανδτης
Incest	Αἰμομιξία
Indissolubility	Ἄδιάλυτον
Inheritance	Κληρονομία
Injunction	Ἠήνυσις
In-laws	Πεθερικά
father-	πεθερός
mother-	πεθερά
Insane	Φρενοβλαβής
lunatic	ἐπιληπτικός
Invalid	Ἄκυρος
marriage	γάμος
Irregular	Ἄντικανονικός
Irretrievable	Ἄντικειμενικός
breakdown	κλονισμός
Judicial	Χωρισμός
separation	μέ δικαστική ἀπόφαση
Jurisdiction	Δικαιοδοσία
Licence	Ἄδεια
Bishop's	ἐπισκοπική
common	κοινή
special	εἰδική
Maintainance	Συντήρησις-διατροφή
Mania	Μανία
Marriage	Γάμος
first	πρῶτος
second	δεύτερος
third	τρίτος
illegal-unlawful	παράνομος
irregular	ἀντικανονικός
inexistent	ἀνυπόστατος
monogamous	μονόγαμος
mixed	μικτός
civil	πολιτικός
ecclesiastical	ἐκκλησιαστικός
Match-maker	Προξενητής προξενήτρια
Minor	Ἄνηλιξ
Mistake	Πλάνη
of identity	ὡς πρός τὸ πρόσωπο

Mourning year	Πένθιμον ἔτος
Murder to murder plot to, murderer	Φόνος φονεύω συνομωσία φόνου φονιάς
Nephew	Ἀνεψιός
Niece	Ἀνεψιά
Nullity	Ἀκύρωσις
Obligation	Ἵποχρέωσις
Offence matrimonial	Ἠταῖσμα συζυγικόν (ὕπαιτιδτης)
Order service	Τάξις ἀκολουθία
Parents father mother grandparents grandfather grandmother	Γονεῖς πατέρας μητέρα παπποῦδες παπποῦς γιαγιά
Parish	Ἐνορία
Penance (s)	Ἐπιτίμιο ἐπιτίμια
Plot against the life	Ἐπιβουλή κατά τῆς ζωῆς
Polygamy	Πολυγαμία
Precision	Ἀκρίβεια
Pregnancy	Ἐγκυμοσύνη
Prohibited degrees	Ἀπηγορευμένοι βαθμοί
Prostitution	Πορνεία
Punish, to punishment	Τιμωρῶ τιμωρία
Rape	Βιασμός
Reconciliation	Συμφιλίωσις

Re-establishment of a dissolved marriage	Ἀνασῦστασις λυθέντος γάμου
Registrar	Ληξιαρχος
Registration	Ληξιαρχικὴ πράξις
Relationship from consanguinity affinity spiritual adoption guardianship diagram of straight ascending descending collateral	Συγγένεια ἐξ αἵματος ἀγχιστείας πνευματικῆ υἰοθεσίας κηδεμονίας διάγραμμα εὐθεῖα ἀνιοῦσα κατιοῦσα πλαγία
Religion non-orthodox non-christians	Ἐθρησκεία ἑτεροδόξοι ἑτεροθρησκοὶ
Reponsible responsibility	Ἐπεύθυνος ὑπαιτιότης
Ring engagement,	Δακτυλίδι ἄρραβῶνος
Ritual	Ἱερολογία
Sacrament (s)	Μυστήριον μυστήρια
Seduction	Ἀποπλάνησις
Separation a mensa et thoro	Χωρισμὸς ἀπὸ κοίτης καὶ τραπέζης
Sex sexual intercourse	Φῦλον συνουσία
Signature to sign	Ἐπογραφή ὑπογράφω
Slave slavery	Δοῦλος δουλεία
Solicitor	Δικηγόρος
Sterility	Στείρωσις
Step-father step-mother step-daughter step-son	Πατριδός Μητριὰ προγονή προγονός

Suit	'Αγωγή
Threat	'Απειλή
Treason (High)	'Εσχάτη προδοσία
Unnatural offence	Παρά φύσιν παράπτωμα
Valid marriage	"Εγκυρος γάμος
Void	"Ακυρος
Voidable	'Ακυρώσιμος
Vows of chastity	"Ορκος ἀγαμίας
Ward of Court	'Υπό ἐπιτροπείαν δικαστηρίου
Widow	Χήρα
widower	χῆρος
widowhood	χηρεία
Wife	'Η σύζυγος
Will	Διαθήκη
Witness (es)	Μάρτυρας μάρτυρες

(b) Greek-English glossary of some terms used
in connection with the Law of Marriage and

Divorce

'Αγαμία	Celibacy
'Αγχιστεία	Affinity
'Αγωγή	Suit
"Αβεια ('Επισκόπου)	Bishop's Licence
'Αδελφός	Brother
'Αδελφή	Sister
Αἰμομιξία	Incest
'Ακολουθία ('Αρραβῶνος) (Γάμου)	Engagement service Marriage-
'Ακρίβεια	Precision
"Ακυρος	Void
'Ακυρώσιμος	Voidable
'Ακύρωσις	Nullity
'Ανᾶδοχος	God-parent
'Ανεσύστασις (λυθέντος γάμου)	Re-establishing of a dissolved marriage
'Ανεψιά - 'Ανεψιός	Niece- nephew
'Ανηλιξ	Minor
'Ανίκανος	Impotent
'Ανικανότης	Impotence
'Απαγόρευσις	Prohibition
'Απαγωγή - 'Αρπαγή	Abduction
'Απάτη	Deceit
'Απειλή	Threat
'Απόγονος	Descendent
'Αποκλισις	Deviation

'Απόπειρα (συμβιβασμοῦ) (φόνου)	Attempt of (reconciliation) (murder)
'Αποπλάνησις	Seduction
'Αρραβῶν (Μνηστεία)	Engagement (Espousals)
'Αστική (Νομοθεσία)	Civil (Legislation)
Βαθμὸς (συγγενείας)	Degree (of relationship)
Βάπτισις	Baptism
Βία	Duress
Βιασμός	Rape
Γαμβρός (Νυμφίος)	Bridegroom
Γάμος (πρῶτος) (δεύτερος) (τρίτος) (παράνομος) (ἀντικανονικός) (ἄκυρος) (ἀνυπόστατος) (μικτός) (Πολιτικός)	Marriage (first) (second) (third) (unlawful-illegal) (irregular) (null - void) (inexistent) (mixed) (civil)
Γέννησις	Birth
Γονεῖς (Πατέρας) (Μητέρα)	Parents (father) (mother)
Δακτυλίδι (ἄρραβῶνος)	Ring (engagement)
Διαζῦγιον	Divorce
Διγαμία	Bigamy
Δικαιοδοσία	Jurisdiction
Δικαστήριον (ἐκκλησιαστικόν) (πολιτικόν)	Court (ecclesiastical) (civil)
Δόλος	Fraud

Δουλεία	Slavery
Δούλος	Slave
'Εγγονός (ἔγγονή)	Grand-son (grand-daughter)
'Εγκατάλειψις	Desertion (malicious)
"Ἔθιμον	Custom
"Ἐκτροσις (ἄμβλωσις)	Abortion
'Ενηλικίωσις (ἐνήλιξις)	Majority, age of (emancipated)
'Ενορία	Parish
'Εξαδελφος (ἑξαδέλφη)	Cousin (cousin f.)
'Επιβουλή (κατά τῆς ζωῆς)	Plot (against the life)
'Επιληπτικός (ἐπιληψία)	Epileptic-Lunatic (Epilepsy)
'Επισκοπικὴ ἄδεια	Bishop's Licence
'Επιτίμιο (ἐπιτίμια)	Penance (penances)
'Εσχάτη προδοσία	High treason
'Ετεροδοξοί	Non-orthodox
'Ετεροθρησκοί	Non-Christians
Εὐχολόγιον	Book of Services (-of Common Prayer)
'Ηλικία	Age
Θάνατος	Death
'Ιερολογία (ἄρραβῶνος) (γάμου)	Ritual (engagement) (marriage)
'Ιερωσύνη	Holy Orders
Κηδεμονία (κηδεμών)	Guardianship (guardian)

Κληρονομία (κληρονομῶ) (κληρονόμος)	Inheritance (to inherit) (heir)
Κωλύματα (ἀπόλυτα) (σχετικὰ)	Impediments (absolute) (relative)
Λαθρογαμία	Clandestinity
Ληξιαρχος (Ληξιαρχική πράξις)	Registrar (registration)
Λύσις (διάλυσις)	Dissolution
Μανία	Mania
Μάρτυρας (μάρτυρες)	Witness (witnesses)
Μητέρα (πατέρας)	Mother (father)
Μητριά (πατριός)	Step-mother (step-father)
Μικτός Γάμος	Mixed Marriage
Μνηστεία (ἀρραβώνας)	Espousals (engagement)
Μοιχεία (μοιχαλῆς) (μοιχός)	Adultery (adulteress) (adulterer)
Μονογαμία	Monogamy
Μυστήριον (μυστήρια)	Sacrament (sacraments)
Νόθος	Illegitimate
Νύμφη (νυμφίος-γαμβρός)	Bride (bridegroom)
Παράνυμφος (κουμπάρος)	Best-man
Οἰκογένεια	Family
Οἰκονομία	Economy
Ὁμολογία (ὄρκος) ἀγαμίας	Vows of chastity
Παλλακεία	Concubinage

Πάππος (Γιαγιά)	Grand-father (grand-mother)
Πειθαρχία	Discipline
Πεθερδς (Πεθερά)	Father-in-Law (mother-in-law)
Πένθιμος χρόνος	Mourning year
Πλάγη	Mistake-error
Πολυγαμία	Polygamy
Πορνεία	Prostitution
Πιστοποιητικόν γάμου (στεφανοχάρτι)	Certificate of marriage
Πρόγονος	Ancestor
Προγονδς (προγονή)	Step-son (step-daughter)
Πρόικα	Dowary
Προξενητής	Match-maker
Προϋποθέσεις (ὄροι)	Conditions (presuppositions)
Πρόστιμον	Fine
Πρόφασις	Excuse
Πρωτεξάδελφοι	First cousins
Στείρωσις	Sterility
Στέφανα (Στέφης - Στεφάνωμα)	Crowns (crowning service)
Συγγένεια (ἐξ αἵματος) (ἐξ ἀφίπειας) (πνευματικῆ) (υἰοθεσίας) (κηδεμονίας) (ἀνιούσα) (κατιούσα) (εὐθεῖα) (πλαγία) (διάγραμμα)	Relationship (from consanguinity) (from affinity) (spiritual) (adoption) (guardianship) (ascending) (descending) (straight) (collateral) (diagram)

Συγνώμη	Forgiveness
Συγκατάβασις	Condescension
Σύζυγος (ὁ σύζυγος) (ἡ σύζυγος) (οἱ σύζυγοι)	Spouse (husband) (wife) (spouses)
Σύγχυσις (ὀνομάτων) (γονῆς)	Confusion (of names) (of prolis-offspring)
Σύλληψις	Conception
Συμβόλαιον	Contract
Συναίνεσις (ζευγους) (γονέων) (κηδεμόνος) (υἱοθέτου)	Consent (of the couple) (of parents) (of guardian) (of adoptive parent)
Τέκνα (υἱός) (θυγατέρα)	Children (son) (daughter)
Τάξις (ἀκολουθία)	Order (service)
Τιμωρία (τιμωρῶ)	Punishment (to punish)
Τρελλός	Lunatic, Insane
Ἐβρίζω	Abuse
Υἱοθέτησις (υἱοθετῶ)	Adoption (to adopt)
Ἐπαίτιος (ὑπεύθυνος) (ὑπαιτιότης)	Responsible (responsibility)
Ἐπογραφή (ὑπογράφω)	Signature (to sign)
Ἐπομένω	To endure
Ἐποχρέωσις	Obligation
Φόβος	Fear
Φονεύω (φονιάς) (φόνος)	To murder (murderer) (murder)

Φυλή

Race

Χήρα

Widow

(χηρεία)

(widowhood)

(χήρος)

(widower)

Χωρισμός

Separation

(από κοίτης και τραπέζης) (a mensa et thoro)

(χωρίζω)

(to separate)

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