

## **Catholic Canonical Implications of the NAOCTC 2023 Statement on Mixed Marriages**

### **1. Introduction**

- 1.1. Historically, mixed marriages between Catholics and Orthodox were generally met with reservations and discouraged by the pastors of both Churches. However, ecumenical initiatives have deepened the communion relationship between our Churches. Our Churches have grown more accepting of the reality of mixed marriages, resulting in an increased awareness of the importance of supporting couples in mixed marriages within the context of their respective faith traditions. All this is taking place in the context of a society with a declining commitment to religious institutions and a decrease in appreciation of marriage—religious or civil.
- 1.2. The statement "The Pastoral Care of Mixed Marriages: Neither Yours nor Mine—but Ours" of the North American Orthodox-Catholic Theological Consultation marks a significant milestone in addressing Catholic and Orthodox couples' challenges in mixed marriages. It acknowledges the evolving societal attitudes towards marriage and emphasizes the need for pastoral care that respects the unique dynamics of such unions.
- 1.3. The Statement recognizes the richness that can arise from the diversity of their religious backgrounds. By promoting understanding, dialogue, and cooperation between the Catholic and Orthodox Churches, the Statement seeks to foster an environment where mixed-faith couples and families feel welcomed and supported in their journey of faith and love by both Churches.
- 1.4. This paper analyzes the impact of the Statement's critical points on Catholic canon law. While current law sometimes aligns with specific points or allows flexibility, adaptation might be needed to address pastoral needs and societal changes better. Revising canon law should not be seen negatively. The 1990 *Code of Canons of the Eastern Churches* (CCEO) and the 1983 *Code of Canon Law* (CIC) have served the Church well. Notably, the CCEO anticipated potential shortcomings, as its promulgatory document (*Sacri canones*) states that its laws remain in force until the Church's supreme authority modifies them for just reasons, with the most significant reason being the full communion of all Eastern Churches with the Catholic Church.

### **2. Commitment to at least One Church**

- 2.1. The Statement suggests that couples should commit to at least one of their respective Churches rather than each going their separate ways or opting for a civil or non-religious ceremony. This commitment may involve worshipping in either the Catholic or Orthodox Church regularly or possibly participating in the liturgical life of both traditions.

- 2.2. Canonical challenges arise regarding the permission required for the marriage of a baptized Catholic and an Orthodox. Traditionally, this permission is contingent upon the Catholic party's promise to remove the dangers of falling away from the faith and to have all children baptized and educated in the Catholic Church.
- 2.3. *Lumen gentium* 11b refers to the family as the "domestic church," emphasizing its role as the foundational unit of the Church where faith is practiced and transmitted. This concept underscores the significance of family life in nurturing and fostering spiritual growth. Eastern code canon 883 §2 addresses situations where spouses belong to different Eastern Catholic Churches *sui iuris*. In such cases, the code allows for flexibility in observing feast days and days of penance, permitting the family to follow the norms of either spouse's Church *sui iuris*. This provision acknowledges the reality of diverse traditions within the Catholic Church and seeks to promote unity and harmony within families. Concerns for family unity underly the provisions regarding the baptism and ascription of children (*CCEO* cc. 29, 33, and 34 / *CIC* cc. 111 and 112 §1, 2°-3°).
- 2.4. It is theologically and canonically impossible for the Catholic Church to ratify the departure of a Catholic from the Catholic Church (*LG* 11a; *CCEO* cc. 12 §1, 1436 §2 and 1437 / *CIC* cc. 209 §1, 1364 and 1365). Eastern Code canon 12 §2 calls for the faithful to fulfill their obligations to their own Church *sui iuris with great diligence*. Nevertheless, Catholics could be permitted to participate in the life of one of the Churches for an extended period.

### ***For Consideration***

The commitment to share in the Orthodox or Catholic faith tradition need not be treated as an abandonment of the faith and penalized. Pastoral preparation in the decision-making process before the marriage can emphasize that the Catholic and Orthodox parties who participate in the life of their spouse's Churches still retain their status in their original Churches. The arrangement is analogous to that provision that permits the participation in the life of another Church *sui iuris* with no change of ascription (*CCEO* cc. 38, 403 §1 / *CIC* c. 112 §2).

- 2.5. Catholic discipline provides for the participation of Catholics in the life of the Orthodox Church and vice versa. Catholic faithful can approach a non-Catholic minister to receive the sacraments of penance, Eucharist, and anointing of the sick (*CCEO* c. 671 §2 / *CIC* c. 844 §2) if it is physically or morally impossible to approach a Catholic minister. Likewise, Catholic ministers licitly administer the sacraments of Eucharist, penance, and anointing of the sick to Eastern non-Catholics if they seek the sacraments on their own and are properly disposed. Current Catholic legislation provides for sacramental sharing (*communicatio in sacris*) in the case of baptism (*CCEO* c. 685 §1, 2° and §5 / *CIC* c. 868 §1, 2° and §3) and of marriage (*CCEO* c. 833 §1 / *CIC* c. 1116 §3).

***For Consideration***

Both codes indicate that Catholics are permitted to approach non-Catholic ministers (whose sacraments are valid) on the condition that it is physically or morally impossible to approach a Catholic minister." The Catholic Church could reduce the exceptionality of the requirement while taking sufficient precautions regarding the spiritual necessity and avoiding false irenicism, error, or indifferentism.

**3. Baptism and Education of Children**

1. A significant challenge arises concerning the baptism and education of children born to mixed-faith couples. Current Catholic canonical discipline prohibits a Catholic parent from handing over their children to be baptized and educated in a non-Catholic religion. (*CCEO* c. 1439/*CIC* c. 1367)
2. In seeking a solution, the notion of a "domestic church" is fundamental, and the unity of the family is essential. Children facing competing churches and faith traditions may simply reject the faith altogether.

***For Consideration***

One potential solution is allowing for the baptism and education of children in either the Catholic or Orthodox Church, considering the "almost perfect communion" between the two Churches. This change would require the modification of specific canons, such as *CCEO* c. 814, 1°/*CIC* c. 1125, 1° and *CCEO* c. 1439/*CIC* c. 1367, the Catholic Church would need to accommodate the baptism and education of children in either tradition. This modification would reflect the evolving understanding of mixed marriages and the desire to support couples in maintaining their religious identities while fostering unity and cooperation between the Catholic and Orthodox Churches. In like manner, the Orthodox could accept children's choosing of the Churches.

**4. The Notion of Marriage ["Current Marriage Practices"]**

1. This section will address the "Current Marriage Practices" topic in the Statement. Both Churches require an ecclesial context for marriages, in Catholic parlance, *canonical form*, the requirement of specific procedures according to the laws and rites of the Catholic Church when contracting marriage. (*CCEO* c. 828 / *CIC* c. 1108). The forms differ. In the Catholic Church, the celebration of marriages of all Eastern Catholics and Orthodox must include the intervention of a priest who blesses the marriage ("*ritus sacer*" [cf. *CCEO* cc. 828 §2 / *CIC* c. 1117]).
2. No accommodation is required because divergence of canonical form is not a Church-dividing issue.

## 5. Celebration of Marriage ["Practical Realizations"]

- 5.1. The Catholic Church recognizes as valid the marriage of a Catholic and an Orthodox in the Orthodox Church by an Orthodox bishop or priest (*CCEO* c. 834 §1 / *CIC* 1127 §1) without a dispensation.
- 5.2. In some cases, an Orthodox and a Catholic who married in the Catholic Church will approach an Orthodox bishop or priest to bless the marriage in the Orthodox Church so that the Orthodox can retain their status in the Orthodox Church. The Catholic Church prohibits the second religious celebration of the same marriage to give or renew consent (*CCEO* c. 839 / *CIC* c. 1127 §2). Such a practice can raise doubts about whether there was an exchange of consent or whether they simply expressed consent on two different occasions before two different ministers.
- 5.3. The Statement offers two convoluted recommendations.
  - 5.3.1. It first recommends that marriages involving a Catholic and an Orthodox "be married with the Orthodox bishop or priest officiating." This recommendation is because such a marriage celebration would permit the Orthodox spouse "continued participation in the sacramental life of his or her church." The recommendations urge consultation by the parties with their pastors and an official dispensation from ecclesiastical [canonical form].
  - 5.3.2. The recommendation to select the Orthodox Church does not consider the parties' sensibilities or preferences. They could have strong opinions about either of the Churches.
  - 5.3.3. Finally, it seems awkward that the Orthodox Church is recommended for the celebration of marriage because of its more rigid requirements in the case of mixed marriages. However, the second recommendation somewhat mitigates this awkward recommendation.
- 5.4. The Statement goes on to recommend that Orthodox hierarchs, invoking ecclesiastical *oikonomia*, refrain from imposing penalties on Orthodox parties "in legal contractual unions that have been established through the exchange of matrimonial consent and with the intention of a lifelong bond in the Catholic canonical tradition." While the first recommendation urges the celebration of the marriage of an Orthodox and a Catholic in the Orthodox Church, the second recommendation calls for restraint in imposing penalties when the marriage is celebrated in the Catholic Church. There are a few related issues that merit attention:
  - 5.4.1. In light of the recommendation that the parties are encouraged to select one Church, the provision that economy be extended only to the Orthodox party is challenging to comprehend. Does this mean that only the Orthodox party could receive the

Eucharist in the Orthodox Church? If this is the case, the recommendation regarding the commitment to one Church needs to be clarified. Would a Catholic committed to participation in the life of the Orthodox Church be excluded from the sacramental life of that Church?

## 6. The Lifelong Nature of Marriage and Remarriage

- 6.1. The Statement asserts that the Catholic and the Orthodox Churches affirm the doctrine of the "lifelong nature of marriage." In the cases of a failed marriage, the doctrinal / discipline of the Churches diverge. The Catholic Church further spells out that a sacramental marriage is indissoluble (*Catechism of the Catholic Church* n. 1614 / *CCEO* c. 776 §3 / *CIC* c. 1056) and, therefore, cannot offer divorce as pastoral relief for its faithful whose marriages have failed. The Catholic Church can adjudicate a claim against the validity of marriage concerning consent or impediments. The declaration of the invalidity of marriage allows a person to marry. The Catholic Church, consonant with the doctrine of the "lifelong nature of marriage," does not speak of "remarriage."
- 6.2. The Statement indicates that the Orthodox Church is capable of "dissolving marriages, or rather recognizing those whose spiritual foundation has already been destroyed through human frailty." The hierarch can permit remarriage, allowing for the unions of divorced spouses. The lack of such permission is, according to the Statement, an absolute impediment to marriage. There remains an ambiguity regarding the difference between the "free state" of persons given hierarchical permissions to marry and those who receive an annulment. Such an ambiguity carries through to the second union: Is the second union of a person with an annulled first marriage different than that of a divorced person?
7. The pastoral challenge arises when an Orthodox who, after a failed marriage, and a Catholic who has never married want to marry. The Orthodox party is impeded by a prior bond of marriage that is not dispensable because it is of divine law (*CIC* c. 802 §1 / c. 1085 §1). Catholic canon law states that "An impediment, even if only one of them has it, still renders the marriage invalid." (*CCEO* c. 790 §2 / cf. *CIC* c. 1073)
  - 7.1. Consistent with the recognition of *Unitatis redintegratio* n. 5 that the Orthodox Churches have the faculty to govern themselves, Catholic canon law recognizes the canonical authority of legislative and judicial acts of the Orthodox Churches. A marriage between a Catholic and a baptized non-Catholic is governed, with due regard for divine law, by the law proper to the Church to which the party belongs (*CCEO* c. 780 §2, 1° / *Dignitas connubii* art. 2 §2, 1°). The Romanian Catholic Church developed the practice that recognized the declarations of the free state given by the Orthodox Church for faithful who had previously entered into marriage according to the norms of the Orthodox Church. The Apostolic Signatura has declared that the declarations of a free state issued

by the Orthodox Church should not be considered sufficient.<sup>1</sup> The Catholic Church does not recognize the possibility of permission through *oikonomia* to enter into a new marriage, i.e., divorce.<sup>2</sup>

- 7.2. However, the Catholic Church is exploring ways to recognize the declarations of annulment issued by the Orthodox Church. Canon 781, 1° speaks about the "judgment about the validity of a marriage between baptized non-Catholics." With this assertion, the Eastern code does not simply accept the decision of the Orthodox Church but calls for judicial intervention.
- 7.3. There are various procedural possibilities if the Church must adjudicate the case: (1) the procedure to declare the nullity of a marriage (*CCEO* cc. 1357-1371); (2) the documentary process (*CCEO* cc. 1372-1374); (3) to give proof of the free through the premarital investigation (*CCEO* cc. 784 and 1372 §2 and *Dignitas connubii* art. 5 §3) or, if circumstances permit, the briefer matrimonial process before the bishop (*CCEO* cc. 1369-1374).
- 7.4. There is also the possibility for a tribunal of appeal (not the first instance) either to confirm the sentence of the Orthodox Church or to admit the case for ordinary adjudication in the second instance tribunal (*CCEO* c. 1368 §2 and *CIC* c. 1682 §2). In a documentary process, the judge can decide to confirm the sentence of the Orthodox Church or to remand the case to first instance the tribunal for adjudication (*CCEO* c. 1374 and *CIC* c. 1688).
- 7.5. The Statement recommends that "Catholic hierarchs seek ways to receive the pastoral decisions of Orthodox spiritual courts and hierarchs and not only recognize, with the Orthodox hierarchy, the remarriages, in some carefully examined cases, of divorced spouses in mixed marriages but also allow such divorced and remarried Catholic parties in mixed marriages with Orthodox Christians eucharistic participation in the Catholic Church."

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<sup>1</sup> Supreme Tribunal of the Apostolic Signature, "Declaratio" on the admission of the faithful of the Orthodox Romanian Church to the celebration of a new marriage in the Catholic Church," 20 October 2006: *Communicationes* 39 (2007) 66-67.

<sup>2</sup> Pontifical Council for Legislative Texts, "Nota explicative quoad pondus canonicum divortii orthodoxo," 20 December 2012 *Communicationes* 44 (2012) [Hereafter "Nota"] 357-359.

***For Consideration***

Catholic and Orthodox discipline regarding second marriages could be better aligned if the Orthodox hierarchs availed themselves of the procedure of annulment rather than granting a divorce (which cannot be admitted by the Catholic Church).

The Catholic Church has developed sophisticated systems of grounds for nullity based on psychological factors that could serve the Orthodox in their annulment processes.

It might be beneficial for both the Catholic Church and the Orthodox Church to have regular consultations on jurisprudence related to the annulment of marriages. Annulments rather than divorce would more closely align Catholic and Orthodox. This arrangement might reduce the number of declarations of divorce on the part of the Orthodox Church, whose sheer numbers would be expected to compromise the teaching of the Orthodox Church regarding the lifelong character of marriage.

**8. Spiritual Formation of Children in Mixed Marriages**

8.1. The pastoral care of children is complex and sensitive, involving the parents and children and the extended family.

8.2. There are specific canonical issues that need to be taken into account. The Catholic Church will permit a Catholic to marry a baptized non-Catholic only if the Catholic party declares that he or she is prepared to remove dangers from falling away from the faith and makes a sincere promise to do all in his or her power to have all the children baptized and educated in the Catholic Church (*CCEO* c. 814, 1° / *CIC* c. 1125, 1°). Before all others, the parents are obligated to form their children by word and example in faith and Christian living (*CCEO* c. 618 / *CIC* c. 774 2). Parents who hand over their children to be baptized or educated in a non-Catholic religion are to be punished with an appropriate penalty (*CCEO* c. 1439 / *CIC* c. 1367).

8.2.1. The sincere promise to baptize and educate the children in the Catholic Church may not be always be in force since a Catholic can marry an Orthodox in the Orthodox Church validly without making such a promise beforehand (*CCEO* c. 834 §2 / *CIC* c. 1127 §1). Whether or not such a promise is made, one would expect the Catholic parent to share the faith through teaching and worship with the children while avoiding criticism of the non-Catholic tradition.

8.2.2. One notes that parents should form their children in Christian living. The term is not "Catholic." The parents can carry out this responsibility together by creating a Christian home where both faiths are appreciated.

8.2.3. Direct "handing over" of the children to a non-Catholic religion does not often occur. It is more often the case that the non-Catholic party takes a more active (with the passive acceptance or mild resistance of the Catholic party).

8.3. It would seem preferable that the children have a stable relationship with one parish if only for religious education. (To draw an analogy with divorced parents, the child may alternate residences but does not alternate schools.)

8.4. It is vital that the child not feel shunned or outright rejected by either Church. Children who have affection for the Orthodox and Catholic Churches will benefit ecumenical relations.

8.5. Perhaps there are resources or programs offered by the Churches to guide parents in raising children exposed to Catholic and Orthodox practices.

## 9. Common Pastoral Care of Mixed Marriage Spouses and Families

9.1. The Statement makes an imprecise statement: "Both churches have the conviction that only those united in the faith can share the Eucharist." This is not the position of the Catholic Church. The rest of the paragraph is problematic because of the nuance that the Catholic discipline is "false irenicism." The Catholic Church will permit its faithful to receive the Eucharist in an Orthodox Church (*CCEO* c. 671 §2 / *CIC* c. 844 §2) and its ministers to administer the Eucharist to Orthodox faithful (*CCEO* c. 671 §3 / *CIC* c. 844 §3). The 1993 *Ecumenical Directory* provides guidance regarding the concerns of the Orthodox Church (nn. 123-125)

9.2. At this point, there is little more that the Catholic Church needs do to accommodate its discipline in this matter.

## 10. Conclusion

The Statement articulates the basic notion that the care of mixed religion families is not the exclusive concern of the Catholic or the Orthodox Church but rather a shared responsibility. Mixed marriages can still present challenges for couples in navigating differences in practices or doctrines. Both Churches should explore joint spiritual formation opportunities.

The issues enumerated are complex and sensitive, affecting the sensibilities of both of our Churches, but we need to find solutions. Sharing best practices in supporting mixed marriages could strengthen our dialogue and lead to more unified pastoral care for these couples—our joint responsibility.

Chorbishop John D. Faris  
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Feast of St. Justin Martyr