Succession to the Crown Act 2013

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Bob Morris' comment[1] on the Succession to the Crown Bill invites the Church of England to 'fresh, bound-breaking' thinking about Church of England establishment in light of the role of the Supreme Governor of the Church of England and the statutory obligation for the Sovereign to maintain communion with the Church of England. Along with other writers he argues that, in effect, this leaves us with religious freedom in the UK but not religious equality. I hope that Morris' challenge will stimulate such fresh thought – my response is not yet this but concerns another matter that he raises in relation to Roman Catholic marriages. He repeats concern in both Houses of Parliament that children of 'mixed marriages' are obliged to be brought up as Roman Catholics, and he correctly questions the extent of such an absolute obligation contra an article in the *Catholic Herald*.[2]

The Succession to the Crown Bill was duly passed at third reading in the House of Lords on 22 April 2013 and thus completed its Parliamentary progress. It received the Royal Assent on 25 April. Earlier, at report stage on 13 March, I addressed the question of the Roman Catholic 'obligation' by reason of some misapprehensions among Peers, not assisted by the article Morris cited. My contribution to the debate was somewhat technical and I spoke as one who has been much involved in the official Anglican–Roman Catholic dialogue since 1974. The Government, through the Minister, Lord Wallace of Tankerness, had very fairly set out the Roman Catholic position. According to Roman Catholic canon law, giving permission for a so-called 'mixed marriage' is not a Vatican matter but one for the local Ordinary: that is, the local bishop.

At the risk of a little canonical history, I drew attention to three documents and to practice. In the old rules of the Roman Catholic Church on this subject, in the shape of the Code of Canon Law of 1917, the position was rigid

1 B Morris, 'Succession to the Crown Bill', (2013) 15 Ecc LJ 186–191.
2 'Why shouldn't there be a Catholic "Supreme Governor" of the Church of England?', *Catholic Herald*, 31 October 2012.

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and, I would say, harsh.[3] This is no longer the case. The present code of 1983 speaks of 'permission', not 'dispensation'.[4] The old code also required the non-Catholic party in a marriage to promise that the children would be brought up as Roman Catholics. No such promise is required today. The Roman Catholic partner is asked to declare that they will do all in their power to ensure that any children are brought up as Roman Catholics, yet no sanction is applied to the canon, whereas the old code made the bishop's dispensation for a mixed marriage dependent on the bishop's moral certainty about the Catholic upbringing of the children. This is not the case now.

I also touched briefly on practice in a more pragmatic way. Permissions for mixed marriages are given even where it is foreseen that the promise cannot be fulfilled in whole or in part. In making these points, I relied not only on my own past discussions of these questions but on the authoritative interpretation of present Roman Catholic canon law offered in the magisterial commentary on the Code published in 2000 by the Canon Law Society of America.[5]

On the question of the upbringing of children in these circumstances, the Roman Catholic canon lawyers quote the official Vatican Ecumenical Directory of 1993, which clearly indicates that the promise may not be expected to be completely fulfilled, or fulfilled at all, in every case.[6] It states that a Roman Catholic partner can ecumenically fulfil their obligations as a faithful Catholic, short of insisting on the Roman Catholic formation of the children, because the unity of the marriage is more important. The Vatican Directory I re-quoted, speaks of the Catholic partner as

> playing an active part in contributing to the Christian atmosphere of the home; doing all that is possible by word and example to enable the other members of the family to appreciate the specific values of the Catholic tradition; taking whatever steps are necessary to be informed about his own faith so as to be able to explain and discuss it with them

and 'praying with the family for the grace of Christian unity as the Lord wills it'. This officially bears out the Government's assurance that the Roman Catholic rules are not a block to the smooth functioning of the proposed succession rules.[7]

In his concluding speech from the Government Front Bench, Lord Wallace thanked me for my intervention at the Report Stage. At Third Reading he was

3 *Code of Canon Law 1917* Canons 1060–1064.
4 *Code of Canon Law 1983* Canon 1125.
5 J Beal, J Coriden and T Green (eds), *New Commentary on the Code of Canon Law* (New York, 2000), pp 1341–1452 for the commentary on Canons 1124–1129.
6 *Directory for the Application of Principles and Norms on Ecumenism* (Rome, 1993), para 151, available at <http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/documents/rc_pc_chrstuni_doc_25031993_principles-and-norms-on-ecumenism_en.html>, accessed 5 June 2013.
7 For the whole debate at Report Stage, see HL Deb 13 March 2013, col 267ff.

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able to speak of an official conversation with the Roman Catholic Church in this country. He told the House:

> I . . . can inform the House that the view taken by the Catholic Church in England and Wales is that in the instance of mixed marriages the approach of the Catholic Church is pastoral. It will always look to provide guidance that supports and strengthens the unity and indissolubility of the marriage. In this context the Catholic Church expects Catholic spouses to sincerely undertake to do all that they can to raise children in the Catholic Church. Where it has not been possible for the child of a mixed marriage to be brought up as a Catholic, the Catholic parent does not fall subject to the censure of canon law.[8]

Bob Morris was thus right to question the alleged absoluteness of the obligation required of the Roman Catholic partner in a mixed marriage in the 1983 Code of Canon Law. The obligation is always within the unity of marriage and is interpreted with pastoral flexibility.

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Niqabs in Canadian Courts: *R v NS*

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In *R v NS*[1] the Supreme Court of Canada (SCC) was asked to consider a straightforward question: must a Muslim woman remove a niqab (face covering leaving only the eyes showing) when giving evidence in a sexual assault case in which she is the complainant. Two justices said 'yes'; one said 'almost always, no'; and the majority said 'maybe yes, maybe no – it depends'.[2] The matter was

8 HL Deb 22 April 2013, col 1221.
1 2012 SCC 72.
2 Four justices constituted the majority on the seven-member bench. Of the two remaining justices who did not sit, one had heard the case in the Ontario Court of Appeal and the other, also recently appointed from the Ontario Court of Appeal, stood down to ensure a seven-member bench.