

## **On the meaning of the Solemn Declaration**

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The Solemn Declaration was adopted by the General Synod at its first meeting in 1893. The text is printed in the Book of Common Prayer 1962 (though it was not printed in the previous Book of Common Prayer 1918) and it forms section 1 of the Declaration of Principles, which is the first part of the constitutional framework of the General Synod. From time to time, it is suggested that a given controversial action or proposed action would or does “violate” the Solemn Declaration. Such a suggestion implies that the Solemn Declaration is to be understood as a sacrosanct primordial law, which is also unamendable, whose purpose and effect is to prohibit certain kinds of actions or developments in the Anglican Church of Canada. But is there in fact any support for such a reading, other than mere assertion?

I suggest that in fact such a statutory understanding of the Solemn Declaration is a misreading of its purpose and hence of its canonical meaning. I suggest this for two reasons, grammatical and historical.

Grammatically, it is important to bear in mind the nature and construction of any legislation. Legislation exists in order to require, to prohibit or to permit actions. Thus it uses words such as “must”, “shall”, and “may” (or “shall not” and cognates). But the Solemn Declaration is not phrased in mandatory language; rather its language is declaratory, hortatory and aspirational. Thus we find phrases such as “we *declare* this Church to be, and *desire* that it shall continue, in full communion with the Church of England throughout the world...” (emphasis added) Again, the Declaration states that “we *are determined by the help of God* to hold and maintain...” What is missing from these statements is any suggestion of what action would be required to fulfil these aspirations, or what action might need to be prohibited to avoid frustrating them. That is, there is no regulatory framework expressed in mandatory or prohibitory language. There is, for example, no binding requirement that “the General Synod shall not adopt any resolution that would impair or sever the communion of this Church with the Church of England throughout the world.” What follows the Solemn Declaration in sections 2 through 11 of the Declaration of Principles is a clear regulatory framework setting out the requirements for the constitutional

organization of the General Synod, but little of this framework appears to flow from the aspirations expressed in the Solemn Declaration.

There is an important clue to the understanding of the Solemn Declaration in section 11(a)(i) of the Declaration of Principles, which states that “the Solemn Declaration ... belongs in a particular historic context and therefore cannot be altered or amended.” In other words, the Solemn Declaration is unamendable because to do so would be to divorce it from its historical context. One cannot change history. Therefore it is vital to understand the historical context of the Solemn Declaration in order to interpret it.

The backdrop for the Solemn Declaration was the quest for responsible government which through a good part of the first half of the nineteenth century was pursued in the political sphere in British North America. Anglicans in British North America began to press for similar rights with respect to the governance of the Church. It was clear that governance structures were required for the Church to be able to take responsibility for its mission and for the development of a growing Church in a growing colony. As things stood, dioceses were formed by Crown authority, bishops were appointed by the Crown, and there was little interest in England in regulating the affairs of the Canadian Church.

The view both in British North America and the United Kingdom at that time was predominantly that the Anglican Church was an “established” Church in Canada, as was and still is the case with the Church of England. If this were the case, then the Anglican Church in Canada would be governed by all the same laws as the Church of England. One of the cornerstones of that body of law is to be found in the *Submission of the Clergy Act* (1533), or to give it its full name, “*An Acte for the submission of the Clergie to the Kynges Majestie*”. The Act makes it unlawful to convene Convocation without Royal warrant, and declares any acts of Convocation convened without Royal warrant, or adopted without Royal assent to be null and void. In other words, assuming that this Act was in force in Canada, there was no mechanism for governing the Church in Canada, and any attempt to create such a mechanism without the consent of Parliament would have been at best null and void, and at worst illegal.

Attempts to secure permission from the Imperial Parliament to form some kind of self-government for the Canadian Church proved fruitless, and so legislation ultimately had to be

secured at home. *An Act to enable the Members of the United Church of England and Ireland in Canada to meet in Synod* was adopted by the Legislature of the Province of Canada in 1856 and, after a lengthy delay, given Royal assent in May, 1857.

Even with this law in hand, the development of Synods would prove controversial. However, the Bishop of Toronto, John Strachan, was impatient and formed a synod in 1853, without waiting for the enabling legislation. In 1854 the Synod adopted a Declaration of Principles (the “Toronto Declaration”) “for the avoiding of all misunderstanding and scandal”. Synods are such a normal part of the life of the Anglican Church of Canada now, that it is difficult for us to imagine how deeply scandalized many of our spiritual forebears would have felt about their introduction a century and a half ago. Indeed, the same innovation in South Africa led to litigation between the bishop and a priest that would find its way to the highest court of the British Empire. (*Long v The Bishop of Cape Town*, 1863.)

The Toronto Declaration is a carefully-crafted statement of continuity with the Church of England, obviously designed to deflect any accusations of schism or of irresponsible innovation. Thus its first statement is that “we desire that the church in this colony shall continue, as it has been, an integral portion of the United Church of England and Ireland”. It goes on to recognize and affirm the canon of scripture, the 39 Articles and the three-fold ministry as marks of the church that will be maintained. Having also affirmed the Royal Supremacy, the Toronto Declaration then sets forth the matters which the Synod felt it would address. The key feature to note in the Toronto Declaration is the statement of continuity both with the past and with the United Church of England and Ireland. It is clear that the Synod did not intend to break from the Mother Church, but rather “to confine our deliberation and action to matters of discipline, to the temporalities of the church, and to such regulations of order as may tend to her efficiency and extension...” In other words, what was proposed by the establishment of a synod in Toronto was not to be seen an act of schism or rebellion against the Established Church, but as a necessary step to take responsibility for the regulation of the church and the development of its mission in its local context.

The Toronto Declaration would be adopted nearly verbatim by the Synod of the Diocese of Nova Scotia in 1855, and eventually by other synods, as well. Later, when the Synod of the Province

of Canada was formed, it, too, would adopt a similar Declaration of Principles, adding (as had Montreal earlier) a statement that “we desire no control or authority over any but those who are, or shall be, members of the same Church”. The statement repeats language in the enabling act of 1857.

When the General Synod first met in 1893, one of its first acts of business was to declare the principles on which it would proceed, just as its various predecessors had done. The Solemn Declaration is in essence the final version of the series of similar declarations developed and adopted over the previous four decades. Again, we see a statement of continuity with the Church of England, which pre-emptively counters any claim that the step of autonomy implied by the creation of the General Synod might be construed as an act of schism from Anglicanism. National self-government by the Canadian Church is thus depicted by the Solemn Declaration as a legitimate, responsible, and even necessary, step in the development of the Anglican way of pursuing the Christian faith in the Canadian context, and not an act of separation from the Mother Church. Taking up autonomy was simply assuming responsibility for the managing of the affairs of the Church in this country in loyal continuity with the Mother Church. Just as Canada has developed its own systems and traditions of government and laws, in continuity with, albeit in divergence from, those of England, so the General Synod of the Anglican Church of Canada and the Ecclesiastical Provinces and dioceses have developed a domestic and autonomous system of governance and corpus of Canon Law. (Incidentally, the Church of England only obtained its own General Synod in 1969. There can be no suggestion that the Canadian Church should have waited 76 years for that development before arranging for its own governance.)

It would be a serious misreading of the Solemn Declaration, or its predecessor Declarations of Principles, to suggest that they were intended to restrain future action. These declarations constitute a statement of continuity with the past, before embarking on a new project of governance. To some extent they became a sort of formulaic tradition, akin perhaps to the singing of the national anthem before professional hockey games, followed repeatedly as new Synods were formed at various levels and in various jurisdictions, beginning with Toronto in 1854. But these statements of continuity preceded all future action by the various Synods. If the intent were to restrain any future action, then there would hardly be need of a Declaration of any

sort. Restraint could be achieved simply by refraining from forming Synods at all. What we see in all of these Declarations is acknowledgement of the past, and a claim to continuity with it, immediately before embarking on the project of building the future on its own trajectory. Any development of the future implies a measure of discontinuity with the past.

That the General Synod has never understood itself to be restrained from developments in doctrine, worship and discipline is demonstrated very early in its life. For example, the General Synod approved a new Hymn Book in 1908, and a new, Canadian Book of Common Prayer in 1918. A second Book of Common Prayer was approved in 1962, and further liturgical developments have continued to be endorsed by the General Synod. Yet these developments would be quite impossible if the Solemn Declaration were read as prohibiting any change in doctrine or worship since 1893.

A number of changes over the past 120 years have in fact been quite significant and at times controversial. The publication of both the 1918 and 1962 editions of the *Book of Common Prayer* included changes to the introduction in the wedding liturgy which implied shifts in the understanding of the nature and purpose of marriage. The 1962 BCP also included a revision of the Table of Kindred and Affinity, omitting ten of the original thirty classes of prohibited degrees. The marriage rite in the *Book of Alternative Services* again changed the understanding of the nature of marriage, for the first time making procreation an optional purpose of marriage and implying a positive understanding of sexuality in contrast to the at best grudging acceptance, if not open suspicion, of sex in the earlier rites. Revisions to the Marriage Canon in 1967 and 2001 also introduced significant changes in the understanding of marriage, including permission to remarry after divorce, the removal of provisions for restoration of excommunicated divorcees (on the ground that divorcees were no longer being summarily excommunicated) and the elimination of another twelve prohibited degrees of affinity. Thus significant doctrinal changes in the nature and practice of marriage have been effected over the course of a half century without restraint by the Solemn Declaration.

The ordination of women as priests and bishops has also not been successfully restrained by invocation of the Solemn Declaration, even though these developments have led to a state of

impaired communion as the orders of women so ordained, and of men ordained by women bishops, are not universally recognized across the Anglican Communion.

Again, the Eucharistic rite in the Book of Alternative Services implies a significant change in the doctrine of the eucharist from the rites of the Book(s) of Common Prayer. Yet this, too, has been introduced without restraint by the Solemn Declaration.

These few examples suggest that concerns about violation of the Solemn Declaration, even if invoked in opposition to the changes enumerated, have not constrained the General Synod in its decisions.

The only reference to the Solemn Declaration in the Declaration of Principles, other than the amending formula, is found in section 6(i), which assigns to the General Synod jurisdiction over “the definition of the doctrines of the Church in harmony with the Solemn Declaration adopted by this synod.” It is uncertain what the force of “in harmony with the Solemn Declaration” is intended to be. Does it refer to the act of defining doctrine, which is what the Solemn Declaration does as a starting point, or does it refer to the content of doctrine, which the Solemn Declaration does not contain in detail? That is, should the clause be read as implying (1) “just as this synod stated the doctrine of the Church in adopting the Solemn Declaration in 1893, so it now continues to have jurisdiction to define doctrine”, or (2) “this synod has jurisdiction to define the doctrines of the Church provided that no such definition shall be valid unless it is in harmony with the Solemn Declaration?” The wording of the clause is ambiguous. However, if the second reading were intended by the drafter of the clause, it would have been easy to state it explicitly. That said, even if the second of the two readings of section 6(i) were accepted, the arbiter of whether a proposed doctrinal change is, in fact, “in harmony with the Solemn Declaration” is still the General Synod. It would appear from the above few examples that neither the Solemn Declaration nor section 6(i) constrains the power of the General Synod to define doctrine.

The Solemn Declaration is unamendable because it “belongs in a particular historical context” (Declaration of Principles 11(a)(i)) and not because it is understood as a sacrosanct primordial law. It is not possible to change history. Therefore the Solemn Declaration is best understood in its historical context, as a statement of continuity with the past and with the Church of England,

upon embarking on development of the future, unpredictable course of the Anglican Church of Canada. It is a declaratory and aspirational statement of new beginnings, part of a family of similar Declarations, which had their origin forty years earlier in Toronto as a defence against potential charges of illegitimate and unlawful action or even schism. It is a grandiloquent statement recognizing an historic moment, a starting point for new action, and not a mechanism for restraining future action – a statement of continuity with the past from which the future might begin its own trajectory.

Not being prescriptive law, the Solemn Declaration cannot be invoked as such. It is not capable of being violated for the simple reason that it contains no requirements or prohibitions. Whether any particular proposal is to be adopted by the General Synod, therefore, is a matter for the General Synod to determine based on the merits of the proposal and the Synod's discernment of where the Spirit of God is calling it, without reference to or restraint from the Solemn Declaration.

From the foregoing, then, it follows that the General Synod is competent to determine whether to amend Canon XXI to provide for the solemnization of marriage between persons of the same sex, pursuant to Resolution C003 as adopted by the General Synod in 2013. Nothing in the Solemn Declaration prohibits such a decision, and thus a motion so to amend the canon would not “contravene the Solemn Declaration” (Resolution C003 (b)).