

Major (ret'd) the Reverend Matthew Oliver, CD, P.Eng.
Diocese of Edmonton

A Question of Canon or Doctrine?

The first comment relates to the approach chosen for this attempt to bring same-sex marriage into being in the Anglican Church of Canada. As the mistitled (as there is only one), "Submissions solicited from specialists" attests, the question has been struck as one of canon law. I submit that this is a fundamental error, as the primary question to be answered is one of doctrine. Canon law is not doctrine, does not drive doctrine, but rather reflects the legal framework required to maintain what the church considers to be proper teaching.

This deference to the law is a departure from the Christian community's usual mode of discernment and decision-making. Likewise, subordinating doctrinal matters to majority vote leaves behind our community's traditional approach to deal with critical questions of belief. The Jerusalem Council (Acts 15), involving a doctrinal change, was done by full consent of the apostles and elders and ultimately the whole church, not by majority vote.

This is by no means a trite question, and the reason is simple. By addressing the question as one of law, the field is now opened for individual opinion and particularly the opinion of legal specialists. Doctrine, by contrast, has no such latitude. I am not so naïve as to miss the point of striking the question in this manner, which is to open up far greater possibility for change than if the question is left in its correct form as one of doctrine.

The specialist submission on the Solemn Declaration is an example of why I am concerned about this mis-direction. My day job requires that I interpret legislation and case law and apply that interpretation to the facts of cases. On any given legal question, there is a potentially wide scope of possible answers, any of which might fall within the category the courts refer to as 'reasonable'. Some of those answers are contradictory. This is a far different outcome than a more rigorous test that could find an opinion as either correct or incorrect. Legal opinions are exactly that – opinions, which can be supported or discarded depending on your interpretation of the law. Legal opinions are regularly weighed, sometimes accepted, sometimes rejected. In some cases, the legal opinions I've assessed offered diametrically opposing perspectives on the facts.

That aspect of the law places it on a fundamentally different footing than doctrine. Doctrine is either correct, or it is not correct. There is no similar approach that accepts that a reasonable range of

doctrines can co-exist, and particularly not if the doctrines are contradictory. (I'm willfully ignoring the post-modern idea that contradictory ideas can exist simultaneously)

So, while the specialist submission finds that the Solemn Declaration has no prescriptive law embodied (a conclusion that I would support) this misses the point. The Solemn Declaration is not canon law. It is instead a statement that outlines what the early bishops felt was a moral and doctrinal imperative placed upon the church. In the modern era we place little stock in such things, but that does not alter the reality that there continues to be a moral binding that the Solemn Declaration brings forward to us. If we are to discount the moral authority of the Solemn Declaration, we should do so honestly and directly, and not by canonical sleight-of-hand that declares the Declaration to be 'non-prescriptive' at law.

As a final comment on this matter, while I've noted my agreement that the Solemn Declaration does not contain prescriptive legal language, the Canons of General Synod change that status by reference, bringing the Solemn Declaration into canonical standing. From the 2013 edition of the Handbook of General Synod:

6. Jurisdiction of the General Synod

Subject to the provisions of section 7 the General Synod shall have authority and jurisdiction in all matters affecting in any way the general interest and well-being of the whole Church and in particular: [...]

i) the definition of the doctrines of the Church in harmony with the Solemn Declaration adopted by this synod;

Jurisdiction is an entirely legal term, and I would suggest that the act of bringing the Solemn Declaration into an explicit statement on the jurisdiction of General Synod elevates the Declaration to canonical status. The specialist submission suggests that the wording of the clause is ambiguous, but I would disagree as a matter of legal interpretation. The statement explicitly limits the jurisdiction of General Synod to only enacting changes to doctrines of the Church when they are in harmony with the Solemn Declaration. "Harmony" is certainly open to reasonable interpretation.

Finally, it is telling that the one 'specialist' report on the commission's web page is from a specialist in canon law. Are there to be no 'specialist' theologians or 'specialist' bible scholars also providing reports?

Blessing of Same-Sex Unions, or Same-Sex Marriage?

This distinction is a historic one. As was set out clearly in the St Michael Report:

39. It is the view of the Commission that any proposed blessing of a same-sex relationship would be analogous to a marriage to such a degree as to require the church to understand it

coherently in relation to the doctrine of marriage. The Commission noted that the change in civil law in Canada to permit the civil marriage of same-sex couples requires a clarification of the validity and sustainability of the distinction between blessings and marriages in the Canadian context.

The Primate's Theological Commission (PTC) considered that 'same-sex blessing' was so close to marriage that it would need to be understood within the doctrine of marriage. The report also underlined that the use of the term 'same-sex blessing' was historic from the period before the state permitted same-sex civil unions. The church opted for the language of 'blessing' because the civil law of the time prohibited same-sex marriage. Since the civil law has been changed, the language of 'blessing' of same-sex unions is no longer correct. In fact, the discussion has morphed directly into a discussion about marriage, with some suggesting that has been the point all along.

From a sacramental point of view, that conclusion is reinforced. An examination of the marriage ritual allows one to identify two distinct actions. One is the state-authorized taking of a solemn oath before a commissioner of marriage which results in the legal state of marriage. The other is the sacramental activity when the church imparts God's blessing on the couple. Without the blessing, there is no sacramental action by the church (and indeed, no need for an ordained person to conduct the service). Therefore, from a sacramental perspective, the use of the 'same-sex blessing' terminology has always been problematic. A blessing is the church's sacramental sealing of a marriage, and without the blessing there is no sacrament of marriage.

Unfortunately, the Church has continued to display quite muddled thinking on this topic. At the Synod of the Diocese of Edmonton in 2012, a motion was passed authorizing the blessing of same-sex partners. When the motion was presented, the mover clearly stated that this was not intended to permit same-sex marriage, but was about only a blessing. The mover said this was about the church saying to the same-sex couple, as quoted in an Edmonton Journal article after the Synod:

It is not a move toward allowing Anglican priests to marry same-sex couples, Gordon cautioned. "All it is, is an affirmation, saying to people, 'The church wishes you well,'" Gordon said. "It is no more complicated than that."

What I heard clearly from a number of people that supported the motion was that they would not be supporting it if it was a question of marriage. Blessing was something they felt comfortable with. I am concerned about the move to now amend the marriage canon, when it is clear even the clergy in our church do not clearly understand the difference. I will suggest from this example, that there is clearly a need for more education prior to any substantive vote at General Synod.

That perspective was echoed by Bishop Larry Robertson at the last synod:

Diocese of Yukon Bishop Larry Robertson said he was “disappointed” on a number of counts. “I’ve been told by at least one primate and many bishops that we’re not discussing marriage, so we have done no real research on it,” he said. “It’s a complete leap. From my first meeting of the House of Bishops in 1999, I was told same-sex blessings is not marriage—it’s a pastoral thing, and marriage is a doctrinal thing...I feel that for the last 20 years, we’ve been talking about the wrong issue.” (Anglican Journal, July, 08 2013)

Again, if our clergy and our bishops are asking these sorts of questions, it is clear that this is the time for further study in community, and not for substantive decisions.

Impact on Aboriginal Anglicans

I write this as a member of the Metis Nation of Alberta, and a person of aboriginal status in Canada. As has been clearly stated by my aboriginal brothers and sisters in Christ, particularly in the Diocese of the Arctic, the question of marriage in our communities is one that is highly traditional. That is, while southern communities may take a much more liberal view of the developments of white society, that sort of liberal perspective is not reflected in northern communities.

We have just completed the Truth and Reconciliation Commission national event here in Edmonton. Part of that process was the church’s public admission of our past sin, and our need to repent and seek a new way forward where we can walk in community with aboriginal Christians. If the national church proceeds to change the marriage canon to permit same-sex marriage, this will serve to drive a wedge in a place where the early stages of healing are beginning.

This is such a significant point, as it directly engages traditional teachings that exist in aboriginal cultures. The church is beginning to acknowledge that aboriginal cultures have a rich tradition independent of that which the settlers brought to Canada. This tradition has survived the repeated attempts of settler culture to destroy it. Does the Anglican Church now wish to begin that path of adversarial relations with aboriginals anew? For the church to consider moving in a direction that is contrary to the teaching of the elders, has the potential to alienate many northern congregations:

Bishop Lydia Mamakwa of the Northern Ontario mission area also commented that there is no First Nations representation on the committee. “Keep this in mind that the church and the Bible teaches that marriage is between one man and one woman...Our elders are very strong in that belief and they would like to see that continue, so please keep this in mind for our First Nations people, as they are part of the Anglican Church of Canada.” (Anglican Journal, May 4, 2014)

The Anglican Church was personally involved in the horrific damage that was caused to many aboriginal communities through the residential school system. That damage continues to harm

communities, and it will take generations of focused work by both sides to resolve the issues we, as a church community, are partly responsible for. The comments from Bishop Mamakwa, stated in a traditionally understated way, are a powerful caution that should be enough to unseat this canonical process.

The call to Christian community means we do not act in a way that we know will cause harm to our brothers and sisters, but rather withdraw from such changes. To now turn away, and to consider making such a change canonically (which is equally contrary to the aboriginal way of community and decision-making) is to effectively turn our backs on aboriginal Anglicans. We will live precisely into the lowered expectations that all Canadian aboriginal communities have of the Christian church.

The Matter of the Primate's Theological Commission

While the Primate's Theological Commission (PTC) used the language of 'blessing of same-sex unions', their earlier work (referenced above) clearly stated that this was actually a discussion about marriage. As was stated clearly by Bishop Moxley at the last General Synod:

Bishop Sue Moxley, diocese of Nova Scotia and Prince Edward Island, expressed support for the motion. "There's an interesting dynamic: that people can get their head around blessing a couple but not get their head around marriage," she said. "For me, that doesn't make sense because for me a blessing is what a wedding in a church is about." (Anglican Journal, July, 08 2013)

The earlier two reports by the PTC cannot be dispensed with by concluding they did not engage the topic of marriage. Even a surface read of the 2004 and 2009 reports clearly indicates that the commission was talking about marriage.

The questions set out by the Commission on the Marriage Canon for people to ponder have already been fully addressed in a theological context by the Primate's Theological Commission (PTC). That commission was comprised of representatives that truly reflected the breadth of theological perspectives in the Anglican Church of Canada. In the first report of 2004, The St. Michael Report, the commission concluded that marriage was a matter of doctrine. The result of the second report in 2009, The Galilee Report, was in response to questions asked of the commission by General Synod.

From the national church website:

This report responds to two questions posed at General Synod 2007: "the theological question of whether the blessing of same-sex unions is a faithful, Spirit-led development of Christian doctrine" and "Scripture's witness to the integrity of every human person and the question of the sanctity of human relationships."

I respect the work of that commission as the first and only group that had broad-based representation and spent many hours over several years seriously engaging these difficult questions. Any activity the church now takes concerning the marriage canon must be done in a way that is coherent with, and respecting the conclusions presented by the PTC. That the questions the present commission has proposed cover almost the same ground as the PTC analysis, leaves me concerned that this fresh look will dispense with those two reports.

The conclusion of The Galilee Report is significant. In that report the PTC attempted to address two pointed questions asked by General Synod. If the blessing of same-sex unions was a development of doctrine, and of Scripture's witness to the integrity of every person. After two years of deliberation by a group of well-lettered clergy and laity, the PTC was forced to conclude that they were unable to achieve consensus on the question. From the report web page on the national church website:

The Commission offers the paper entitled "Integrity and Sanctity" as its consensus response to that part of the request. Members further prepared papers for discussion at the meetings of the Commission on a range of approaches as to whether the blessing of same-sex unions is a faithful, Spirit-led development of doctrine. The papers represent a variety of theological approaches present among its own membership and in the wider community of the church. Papers address scriptural concerns (Papers 3 and 4), development of doctrine (Papers 5 and 6), pro and con arguments for the blessing of same-sex unions (Papers 7 and 8); alternative approaches to considering human sexuality (Papers 9, 10, and 11), holiness and tradition (Papers 12 and 13), and past examples of changes in pastoral practice and doctrine (Papers 14, 15, and 16).

The process of discussion did not lead to a consensus within the Commission but rather led us to deeper recognition of the ongoing theological conversation that exists and is not complete.

This is a truly startling conclusion – that after two years a small group, working in community and led by prayer, were unable to achieve any degree of common understanding. I will suggest that this reflects a continued deep division within the church today, something that is not suitable to be ruled on by a democratic, canonical process external to the church's usual treatment of doctrine. That is not an original thought, but stated in The Galilee Report:

4. The experience of the Primate's Theological Commission has reflected, in many ways, that of the whole Church. We are not of one mind among ourselves. Deeply faithful and prayerful members, though following similar paths of enquiry, found themselves at very different conclusions. We also found ourselves in agreements that we could not have anticipated, coming to that place by different paths. We found hope together in being at the table in prayer, in Bible study, and in searching conversations of critical fundamental questions.

5. To date, we are not in a position to be able to present a single or consensus answer to the questions the church has placed before us. The papers that follow share the breadth of our discussions. We recognize that none of the questions we examined are simply a matter of finding the right information (in Scripture, in tradition, or in scientific knowledge), nor are they simply a matter of difference in how we do theology or approach the reading of Scripture or the use of scientific or other intellectual discoveries. We found it has been important to

listen to and acknowledge the legitimacy and faithfulness of perspectives other than our own. For this reason the Commission recommends that all the papers be read, not just those most comfortable for the reader. This is not always easy nor without personal cost. We believe that the cost is part of what it means to participate in the hope of the Gospel of Jesus Christ as it is embodied in the doctrine, sacraments, and discipline of The Anglican Church of Canada, and to share in the commitment of the framers of the 1893 Declaration that we would “transmit the same unimpaired to our posterity.”

It is also significant that the PTC, in its lack of consensus on the question of same-sex marriage, looks back to the Solemn Declaration. That statement emphasizes the moral authority of the Declaration and the imperative to ensure that we do not lightly alter doctrine to suit our local circumstance. I would also state that the PTC was exceptionally representative of the full scope of thought on the question of same-sex marriage in our church – that they could not come to a resolution after two years tells me that the church has no business legislating on the question in 2016.

My great concern is that the theological struggles reflected in those two reports are now dispensed with as a new commission looks, not to doctrine or theology, but rather to canonical change. There are a wide variety of things that can be done which are said to be legal, but would not be considered in any way to be moral or, in our case, doctrinal. We are to be about different things than the society we live within, and to subvert the church’s work on doctrine to a purely legal/canonical matter is to abandon our obligation to safe guard the gift given to us through the great tradition represented by the Solemn Declaration.

Any work done by this present commission will have to somehow be shown to be consistent with that set out by the Primate’s Theological Commission in 2004 and 2009 if it hopes to be at all credible.

Answers to the Stated Questions

I’m not going to answer the stated questions, as the form of the questions themselves is a problem.

As has been observed by other commentators, the questions set out by the present commission presuppose some of the answers. If the commission’s perspective on Scripture and tradition is that it is a matter of individual interpretation, then the discussion is pretty much over. If it all comes down to the individual, the matter could be answered by majority vote. If, however, the question is not one of individual opinion but one of doctrine, what I may believe personally is nearly irrelevant. What matters is what the tradition tells us, and that cannot be undone by 50 or even 100 years of different thinking. As Richard Hooker stated clearly in his *Lawes*, tradition, tested and accepted through long practice, effectively becomes as law for the community.

I know this is a controversial statement in the modern western church, but matters of doctrine are not ones that should be decided by democratic process. This is something key that has been lost as our church has adopted the rule of law as the sole guide to all of its actions – so now we ask ‘is it legal’ as opposed to ‘is it consistent with our doctrine’. This fundamental shift is the reason why we can easily dispense with documents such as the Solemn Declaration, because we no longer respect those seminal writings as foundations of our faith and tradition.

The Scriptural references around this question have been tossed about endlessly. I will say that any canonical change adopted by the Anglican Church will need to somehow coherently engage Christ’s words in Matthew 19 – in response to a question about divorce, Jesus recites his understanding of marriage as set out in the Old Testament.

One of the ways out of the present theological morass we find ourselves in is to follow the practice of the Church of England, and to sever the connection between sacramental marriage and clergy acting as marriage commissioners as agents of the state. The only reason in favour of such an arrangement is one of convenience for those prepared to wed. In England, the state service is conducted at a government office. If a couple so desires, they can then proceed to ask the church for sacramental marriage. I would suggest that this severing is something long overdue in Canada.

A final word of caution. One of the things that General Synod asked this present commission to undertake was the following:

confirms immunity under civil law and the Human Rights Code for those bishops, dioceses and priests who refuse to participate in or authorize the marriage of same-sex couples on the basis of conscience;

I will respectfully submit that there is no way that the church could possibly make any assertion, canonical or doctrinal, which would fetter the courts or administrative tribunals from acting under the law of Canada and the Charter of Rights and Freedoms. To even ask the question is nonsensical. Even putting a ‘conscience clause’ in whatever canonical change is eventually implemented will offer absolutely no protection to dissenting clergy. Simply stated, our canons and our doctrine are almost totally irrelevant when it comes to a question of Canadian law.

Even if we obtain a legal opinion from a well-lettered officer of the court that promises immunity under law, the only way such an opinion could be proven is through court trial. This is a further highlighting of my previous statements about legal opinion – there are a multitude of things that can be shown to be acceptable under the law, but the only place those opinions are upheld or destroyed is once a court has ruled on the question.

I fear for the dissenting clergy who chose to remain within the Anglican Church of Canada, once the church decides that it is time to amend the marriage canon. Right now we are protected by church law – we cannot perform that which is prohibited. If someone has an issue with that perspective, it is a matter against the church as a whole. Once the marriage canon is altered, that question now becomes one between the individual dissenting clergy and the person asking for marriage in the church.

Given that the church cannot promise its clergy immunity under civil law or under the Charter, the best the national church could do is guarantee to underwrite the legal expenses of those clergy who chose to dissent and are subjected to legal proceedings. I would suggest if the marriage canon is to be changed, it should include a provision to provide full funding for the defense in court or at tribunal of clergy who dissent by reason of conscience.

Conclusion

I have preached and written against the practice of leaving a 'church' because of a disagreement over matters of teaching. Simply stated, I'm not sure that we are ever called to leave the 'church' (meaning the Body of Christ) because where we happen to be does something that we find distasteful. The call to the Christian is to live in difficult community, with those who are different from us and challenge us, and that call has kept me in the Anglican Church of Canada even while many colleagues, friends and brothers and sisters in the faith have left to worship in other parts of the body.

That said, I have heard from a number of people that a change to the marriage canon would signal such a departure from the faith once given, it would leave them no choice but to find a different denomination. This is not because of the marriage issue, but rather because the Anglican Church's method of discussing that change is no longer framed in an overtly Christian context. As our brothers and sisters in the Evangelical Lutheran Church of Canada have experienced, this is a seminal issue with far-reaching consequences (see the Anglican Journal article of July 8, 2013 that stated, "35 congregations left in Alberta alone and their budget declined by 25 per cent.").

In the latest Anglican Journal (September 2014) the ELCIC is now stating (in the words of the Primate) that they are in a "much less conflicted place". That is the inevitable outcome of a process that resulted in the dissenting voices leaving the community. We need to walk this dangerous road with our eyes wide open live to the potential consequence of undoing what our forebears and elders in the faith have chosen to entrust to us.