



# *The Doctrine Commission Of the Anglican Church of Australia*

## SOLEMNIZATION OF MATRIMONY AMENDMENT BILL 2007

A canon to amend the Solemnization of Matrimony Canon 1981.

The General Synod prescribes as follows:

### **Short Title**

1 This Canon may be cited as the “Solemnization of Matrimony Amendment Canon 2007”.

### **Amendment of Section 3**

2 Section 3 of the Solemnisation of Matrimony Canon 1981 is amended by deleting subsection (b).

3. The provisions of this canon affect the order and good government of this Church within a diocese and shall not come into force in any diocese unless and until the diocese by ordinance adopts it.

## REPORT ACCOMPANYING BILL TO AMEND THE SOLEMNISATION OF MARRIAGE CANON 1981

### **Introduction**

1. In 1981 the General Synod passed the Solemnization of Matrimony Canon. This canon repealed the relevant canons of 1604 and introduced rules, which by and large reflected the principles of 1604, though with some notable exceptions.
2. The changes in the main reflected differing circumstances between seventeenth century England and twentieth century Australia. The areas of adaptation between 1604 and 1981 included the following:
  - a. marriage can be performed by a deacon as well as a priest;
  - b. the celebrant is to be registered under Commonwealth law;
  - c. marriage requires at least one party to be baptised;
  - d. marriage can be held in other than a church or chapel, with the bishop’s permission;
  - e. marriage can be held at times other than between 8am and 3pm
  - f. marriage of a minor is allowed under relevant Commonwealth law;
  - g. marriage of divorced persons is allowed under relevant diocesan laws

It is the third of these provisions, which is the subject of this paper.

3. It is not entirely clear why the General Synod chose to insert the requirement that one of the parties to be married must be baptised. The canons of 1604 make no reference to the baptismal status of either party seeking marriage. It is often supposed that the reason for this

is that the *Book of Common Prayer* assumed all English people to be baptised as infants. However, the opening rubric in the Order for the Burial of the Dead, indicates that the office is not to be used for any unbaptised person.<sup>1</sup> Thus the existence of unbaptised persons in England was clearly recognised. Nonetheless, although baptism is not explicitly required of those who wish to be married, the form of Solemnisation of Matrimony implies that both parties are baptised and confirmed, given the admonition that they should partake of the holy communion either during the service or at the first opportunity thereafter.

4. When the Anglican Church of Australia considered changing the expectation that both parties must be baptised, two questions would naturally have arisen: (1) Can the Church solemnise the marriage of an unbeliever and a believer? (2) Can the Church solemnise the marriage of two unbelievers?<sup>2</sup>

### Mixed Marriages

5. Under the Mosaic covenant Israelites were forbidden marriage with the nations of Canaan (Deut 7:3). Abraham's concern that Isaac marry one of his own kin and not a Canaanite woman followed a similar principle, as it was for Isaac's son Jacob (Gen 28:1-2). This was not merely for the sake of racial purity, but a moral purity to produce godly seed (Ezra 9:2; Mal 2:15). Despite the deception of the sons of Jacob in relation to Shechem and Hamor, they rightly enunciated the principle that foreign males must be circumcised before taking Abrahamic daughters (Gen 34:15).<sup>3</sup> Interracial marriages did take place (notable examples being Moses and Boaz), but in each case the non-Israelite woman was a woman of faith. Because the Lord's judgment was upon Israel for marrying pagan wives (Josh 23:12-13), Ezra demanded those Israelites who had transgressed this rule to divorce their wives (Ezra 9-10).
6. Under the new covenant, there does not seem to be any change in the expectation that Christians should marry Christians. Thus Paul explicitly states in 1 Corinthians 7:39 that a Christian widow, if she remarries, can only do so "in the Lord". Likewise the application of Paul's instructions about mixed partnerships, with its patent reference to the danger of mixed marriages under the old covenant, implies that Christians ought not to be mismated with non-Christians (2 Cor 6:14). As O D Watkins states in his article on "Christian Marriage" in *The Prayer Book Dictionary* (1912), "The weight of Christian precedent is against sanctioning the solemnization of any marriage between a baptised person and a person unbaptised."<sup>4</sup>
7. Nonetheless, under the new covenant, the situation arises where an adult convert is already married to an unbeliever. In this case, Paul indicates that such a circumstance does not place the marriage of the Christian brother or sister in jeopardy. On the contrary, it may be the

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<sup>1</sup> According to Canon 68, a minister could not refuse to bury a person unless that person "were denounced excommunicated". This dictum dates back as far as Pope Leo the Great (448): "we cannot hold communion in death with those who in life were not in communion with us." Presumably the 1662 *BCP* was expressing the same principle when it extended the exclusion from Christian burial to the unbaptised and those who have laid violent hands upon themselves, as well as the excommunicated. These exclusions continue in the Church of England today, although other orders of service are now permissible (Canon B38).

<sup>2</sup> The form of this canon when first proposed bore no reference to any requirement that either party be baptised. Nothing in the proceedings of the General Synod gives any evidence of the reasons for this change and even the mover of the bill (Bishop D W B Robinson) was unable to recall the reason for its addition (from a private conversation during 2005).

<sup>3</sup> This episode in patriarchal history also indicates the shallowness of using circumcision as a bargaining chip for marriage between the sons of Jacob and the nations. It was not only deceitfully used by the sons of Jacob but also considered by the Hivites to be a matter of little consequence or conviction, but only a means to an end.

<sup>4</sup> The Roman Catholic position is similar. "An impediment known as DIFFERENCE OF WORSHIP, invalidates marriage contracted between a non-baptised person and one baptised." *The Teaching of the Catholic Church*, ed G D Smith (New York: Macmillan, 1964), II.1082.

opportunity for the unbelieving spouse to be saved (1 Cor 7:13; cf 1 Peter 3:1), although this is not to be understood as providing any justification for a Christian to marry a non-Christian. However, if the unbelieving partner wishes to separate, then the believing spouse is not bound (1 Cor 7:15).

8. It is surprising, therefore, that the General Synod condoned the solemnisation of marriage between two parties where only one was baptised. It is against the teaching of Scripture, against the tenor of the *Book of Common Prayer* and has no precedent in any canon law of the Church of England.<sup>5</sup>

### Marriage between two unbelievers

9. The possibility that marriage might be solemnised between two unbelievers in a church ceremony may seem at first an oddity. This raises the question of the relationship of the church to the world. Can the church pronounce a blessing upon two unbelievers? Is the institution of marriage, which at its deepest level reflects the union of Christ and the church something into which the unbeliever can enter? For those who consider marriage to be a sacrament,<sup>6</sup> the notion of participation in such a sacrament by unbelievers may be more problematic.<sup>7</sup>
10. Marriage was instituted for humankind as God's image bearers. It is an ordinance for all humanity, rather than a redemptive ordinance. While it has specific Christian application, the Prayer Book's understanding of marriage bears equal application to marriage outside the covenant community. This may be seen in the threefold "causes for which matrimony was ordained": the procreation of children; a remedy against sin so as to avoid fornication; and the companionship between a man and a woman. Throughout the Bible, these three aspects of marriage are recognised both within and without the Abrahamic community. Nowhere is the marriage of unbelievers regarded as of a different order than that between the members of the household of faith.<sup>8</sup> As Christopher Ash says:

The created order inheres precisely in all creation. It is not the preserve of any locality, any period of history or any culture. Nor is it applicable only to the people of God. This is important in view of the confusion surrounding the supposed difference between 'marriage' and 'Christian marriage'. Marriage is an ordinance of creation not a regulation of the church; it may be entered outside the sphere of faith, and when entered from within the sphere of faith it does not change its essential character. Couples may have different levels of understanding of the purposes for which marriage was ordained, but those who know neither the creation origins nor the redemptive significance of marriage may yet marry. And when they marry, they marry; they do not partially marry because they are outside the boundaries of the church, and they do not marry in some superior way if they are within.<sup>9</sup>

<sup>5</sup> The revised canons of the Church of England make no mention of baptism as a requirement of either party to a marriage, or that lack of baptism would be an impediment, notwithstanding the inclusion of certain other impediments to the solemnisation of matrimony. See Canons B30-36.

<sup>6</sup> Albeit not a sacrament of the gospel, in accordance with Article XXV.

<sup>7</sup> Even John Macquarie, who argues for recognition of marriage as a sacrament, agrees that 'Marriage, of course, is a "natural" institution as well as being a Christian sacrament, and as a natural institution, it is a far wider phenomenon. Here we must recognize the continuity between the natural institution and the Christian sacrament...The so-called "natural" institution already contains *in nuce* that which is unfolded and understood in depth in the light of Christian revelation.' *Principles of Christian Theology* (London: SCM, 1966), 453-55. Some would go further, arguing that marriage, even in Genesis 1, bears a redemptive and therefore sacramental character.

<sup>8</sup> In fact it could be argued that an Egyptian Pharaoh (Gen 12:10-19) and Abimelech the King of Gerar (Gen 20:1-18) placed a higher value upon the marriage bond than even Abraham did.

<sup>9</sup> C Ash, *Marriage. Sex in the Service of God* (Leicester: IVP, 2003), 75.

Similarly, Emil Brunner writes of marriage and other orders of creation:

They are all independent of faith, and of love which flows from faith. They exist because of the psychophysical nature of man. Their nature and their existence are recognised by means of reason, not by faith, by means of the purely natural powers of cognition which is given to every man just because, and in so far as, he is a human being. In them the life of the community is achieved before faith comes upon the scene at all.<sup>10</sup>

11. Helmut Thielicke enunciates four points concerning what he calls the ‘worldliness’ of the estate of marriage

1. It is asserted that the estate of marriage is not constituted by the fact that it is entered into by persons who are aware of its theological implications and who therefore, since they know the Creator and Redeemer, know it also in its affinity to the order of creation and redemption.

2. It is asserted that marriage has no redemptive significance and that one is not ‘saved’ through it. We are not saved through an ordinance with which we are in conformity, but only through *faith*...

3. It is asserted that as an order of creation marriage is an institution established for ‘all men’ and which can also be observed by ‘all men’, that is, independently of faith.

4. And finally it is asserted that marriage is instituted as an order of preservation for ‘the whole world’. In a way parallel to that in which for Luther the state constitutes the *social* basis for life and prevents the world from sinking into chaos, so marriage establishes the *biological* prerequisite for life. Both orders are required for the preservation of a world which is to be kept in being for its salvation, preserved for the chance of the day of salvation (*kairos*, 2 Cor 6:2). They do not themselves *mediate* salvation, but they do *preserve* for salvation. We are preserved because we must have the chance to be called.<sup>11</sup>

12. When Jesus addresses the question of divorce with the Pharisees in Matthew 19:3-9, he reminds them of the basic constitution of marriage and its foundation in creation. It is not Hebrew marriage, *per se*, but human marriage, to which Jesus draws our attention.<sup>12</sup> Moreover, those who conform to God’s ordinance of marriage<sup>13</sup> are joined by God (Matt 19:6). As we have seen with Paul’s instructions in 1 Corinthians, a recent convert who was previously married should continue to stay in the marriage, unless the unbeliever wishes a divorce. However, there is no suggestion that the marriage (originally between two unbelievers) is illegitimate or invalid. Unlike baptism and the Lord’s Supper, which are redemptive ordinances for the people of God, marriage is an ordinance for all who are made in the image of God. In the words of Oliver O’Donovan:

<sup>10</sup> E. Brunner, *The Divine Imperative* (Butterworth, 1953), 335. Note Calvin’s comment on the seventh commandment: “Man has been created in this condition that he may not lead a solitary life, but may enjoy a helper joined to himself...therefore the Lord sufficiently provided for us in this matter when he established marriage, the fellowship of which, begun on his authority, he also sanctified by his blessing. From this it is clear that any other union apart from marriage is accursed in his sight.” *Institutes* 2.8.41.

<sup>11</sup> H Thielicke, *The Ethics of Sex* (ET London: James Clarke & Co., 1964), 139-140.

<sup>12</sup> “The ethical teaching of Jesus removes all limitations from the sphere of validity of divine law. In contrast to those who defined the people of God by nationality, Jesus’ teaching is addressed to all men (‘every one who...’). By referring back to Genesis and the creation narratives in his dialogue with the Pharisees on divorce, Jesus demonstrated that his teaching applies not just to Jewish (or Christian) marriage, but to human marriage in its totality.” D Atkinson, *To Have and to Hold. The Marriage Covenant and the Discipline of Divorce* (London: Collins, 1979), 144.

<sup>13</sup> The ordinance of marriage presupposes the exclusive and permanent union of a man and a woman. See John Murray, *Principles of Conduct* (London: Tyndale, 1957), 45-81.

In the ordinance of marriage there was given an end for human relationships, a teleological structure which was a fact of creation and therefore not negotiable. The dimorphic organization of human sexuality, the particular attraction of two adults of the opposite sex and of different parents, the setting up of a home distinct from the parental home and the uniting of their lives in a shared life...these form a pattern of human fulfilment which serves the wider end of enabling procreation to occur in a context of affection and loyalty. Whatever happens in history, Christians have wished to say, this is what marriage really is. Particular cultures may have distorted it; individuals may fall short of it. It is to their cost in either case, for it reasserts itself as God's creative intention for human relationships on earth; and it will be with us, in one form or another, as our natural good until (but not after) the kingdom of God shall appear.<sup>14</sup>

## Conclusion

13. We live in a vastly different world from that of the sixteenth century. We can no longer proceed under the presumption that people seeking marriage are baptised. With the increase of civil celebrants and the majority of Australian marriages being registered without a minister of religion, it is surely time to reclaim the ordinance of marriage as an ordinance for all people, including those who are not yet baptised. It provides the opportunity for 'the church to speak to the world'.<sup>15</sup> The Christian church is best placed to speak of the meaning of marriage and the alignment between creation and redemption. As Jesus assures his hearers that it is God who joins two people in marriage, the Christian minister can pronounce God's blessing upon such a union, where it accords with God's intentions for human marriage. For God's blessing in creation, like the rain and the sunshine, is for the evil and the good, for the just and the unjust, that they might seek after God and find him.<sup>16</sup>
14. The current legislation in the Anglican Church of Australia requires a minister to ascertain whether one of the parties is baptised. If neither one is baptised, nor wants to be baptised, merely to conform to canonical correctness,<sup>17</sup> the minister cannot proceed. Yet one party could have been baptised as an infant and yet never personally professed Christ, never been confirmed and without any present association with the church, other than a desire for marriage in accordance with God's law. What justice is there in accepting such a person for marriage and denying one whose experience is identical, except that their parents did not bring them to baptism in their infancy? Surely even for those who consider marriage to be a sacrament, more than the evidence of baptism would be required to ensure that the sacrament had "a wholesome effect or operation".<sup>18</sup> Decisions as to whether such persons should be married in church are usually left in the hands of the minister. Yet there is no such liberty for a minister to exercise any discretion where neither party is baptised; no liberty to extend the blessing of God the Father to those outside the kingdom (Matt 5:45).
15. No doubt the intention of the General Synod in 1981 was to update the rules for marriage according to Anglican rites in the Australian context. It is understandable that there was a desire to see a relaxation of the expectation (though significantly not a previous requirement) for both persons to be baptised, though it is less clear why it was considered necessary that

<sup>14</sup> O O' Donovan, *Resurrection and Moral Order: An Outline for Evangelical Ethics* (Leicester: IVP, <sup>2</sup>1994), 69.

<sup>15</sup> Ash, *Marriage*, 76.

<sup>16</sup> Matt 5:45; Acts 14:15-17; 17:26-27.

<sup>17</sup> While it is a wonderful outcome for the parties to marriage to hear the gospel and be converted, it is another matter entirely to perform a perfunctory rite (in the mind of the recipient) in order to satisfy an ecclesiastical canon. Such a scenario is dangerously close to the deceptive requirement of circumcision for the Hivites, by the sons of Jacob, before any marriage with the daughters of Jacob could be contemplated (Gen 34:13-31).

<sup>18</sup> "And in such only as worthily receive the same [sacraments] they have a wholesome effect or operation: but they that receive them unworthily purchase to themselves damnation, as Saint Paul saith." Article xxv.

one party be baptised. After all, it is no longer a requirement that only baptised persons are eligible for a funeral service in accordance with Anglican rites. However, to go half way, requiring at least one of the parties to be baptised is an anomaly, if not a travesty of biblical teaching. In a day when less than half of all marriages are conducted as church ceremonies, it is hardly evangelistically enterprising or pastorally sensitive to insist that one party be baptised before a minister can accede to their request to be married. However, to receive the blessing of God in marriage does not require that both parties (let alone one party) be baptised. God desires that men and women live in the harmony of married relationships with all the benefits that such an estate conveys. If our Church is to engage effectively with unchurched Australians, we would do well to rejoice in the things we have in common with unbelievers; encourage them to get married in accordance with God's laws, and in so doing invite them to receive the blessing of God in a public ceremony. We are more likely to save our hearers by sharing with them the benefits of being an image bearer, before we share with them the benefits of being a member of God's family. To insist upon the necessity of baptism before marriage is to put the cart before the horse.

## Options

16. If the General Synod is persuaded that the Solemnization of Matrimony Canon 1981 should be amended, two options present themselves: (1) to include a requirement that both parties must be baptised, or (2) to remove the requirement that either party has to be baptised.
17. Option (1) has the merit of seeking to make Christian marriage distinct from the marriage that is administered by a civil celebrant. However, it does not go far enough. For Christian marriage is a marriage between two professing Christians, baptised communicant members of Christ's body. If the couple are seeking God's blessing in accordance with the rites of the Anglican Church, should not both parties be communicant members of the Anglican Church? This would be theologically more consistent with the view that both parties should be baptised. Yet if we were to adopt such an amendment, a significant loss of contact with unchurched Australians would eventuate. We would be restricting our access to Australian society by refusing to marry other than our own.
18. Option (2) has the merit of reasserting marriage as an ordinance of God for all humanity and preserves the integrity of the estate of marriage in our society. It is mission-minded as it provides opportunity to bring people into a closer relationship with God, even if they are not ready to become disciples of Jesus in the pressured timetable between first interview and the date of the wedding. Furthermore, it leaves the decision in the hands of the minister as to the appropriateness of marrying two unbaptised persons in accordance with Anglican rites.
19. The Doctrine Commission discussed the merits of these options and agreed that option 2 was to be preferred. Accordingly, the Commission agreed that a bill which amended the Solemnization of Matrimony Canon 1981 by deleting paragraph 3(b) was worthy of consideration by the General Synod.

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 For and on behalf of the Doctrine Commission  
 7 February 2007