WHAT IS AT STAKE FOR ANGLICANS IN THE WANGARATTA MOVE

GETTING TO THE FUNDAMENTALS

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In 1955 in the final stages of the debate of the new constitution for the Church of England in Australia, Broughton Knox from Sydney attempted 'to have the Book of Common Prayer and the Articles moved from the Ruling Principles in the constitution into the unalterable Fundamental Declarations chapter'.[1] He failed. When the final version later came to the synod of the diocese of Sydney the constitution was accepted without any change. The place of the Fundamentals was contentious because it went to the heart of what was essential and unchangeable in the new constitution. The Anglican Church of Australia (ACA) is currently agitated by a decision of the synod of the diocese of Wangaratta to allow a blessing service for a legally married same sex couple.

Undoubtedly individuals, lay, clerical and episcopal, will hold differing opinions on a lot of things, and even, as in this case, things they hold dear and regard as crucial in their christianity and their membership of the Anglican Church of Australia. However, this debate is not about the personal views of individuals. It is about the decision of a diocese that is an institution operating under the constitution of the ACA. The question is therefore about the meaning of the constitution and the canons made under that constitution. That debate has raised the question of the role and meaning of the Fundamental Declarations in the Anglican Church of Australia. The idea of "fundamentals" has a significant history in Anglicanism and we will need to return to this later. I hope to show later that the fundamentals tradition is addressed to what is necessary for a church to be christian. It is not concerned with what an individual christian might believe when they are part of a 'particular' or 'national' church. This fundamentals tradition is thus relevant to the question of the Fundamental Declarations in the constitution of the ACA..

Differences of conviction about relations between the sexes have been widely agitated in the Anglican Communion. Some parishes and dioceses have broken away from their churches. The Global Anglican Future Conference (GAFCON) has actively sought to offer support for dissenters in existing Anglican Provinces and has been active in opposing what they see as any loosening of the traditional moral teaching and practices of Anglican churches. Alternative jurisdictions have been established in a number of countries, most notably in the United States. There is a GAFCON branch in Australia, whose Chair is the bishop of Tasmania. This group made a submission to the Appellate Tribunal. The Anglican Communion has been preoccupied with these issues and has struggled to deal with the alternative organisations that have been established. In the United States an alternative ecclesiastical province has been created. The presenting issue has been the institutional recognition in the church of same sex relationships in marriage, and ordination.

Actual decisions by the ACA on gender relationships have been somewhat limited. This has been in part due to the loose federal structure of the church, of which more later. The ordination of women was finally agreed by the General Synod in 1992 but not accepted in a number of dioceses. Ordination of women as bishops was deemed not inconsistent with the constitution and canons in 2007 and a number of women have been so ordained. There has

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[1] J Davis, *Australian Anglicans and their Constitution* (Canberra: Acorn Press, 1993) 156

been a running debate about male headship reflected in the alternative marriage services in A Prayer Book for Australia (APBA) which was approved in 1995. One service retains a promise of obedience from the bride and the other does not. Same sex marriage was made legal in Australia in 2017 by an Act of the Commonwealth Parliament There have not been any steps to take up the opportunity provided by the new civil law for the church to provide marriage services for same sex couples. In the ACA the accepted view of marriage as a heterosexual relationship remains unchanged.

The present matter from the diocese of Wangaratta is the first time the issue of same sex marriage has come up institutionally in the church, not as an example of a same sex church marriage, but as the blessing of a marriage between two people already married under the revised Commonwealth Marriage Act. The Wangaratta move was seen as highly controversial and asserted by some to be inconsistent with the constitution of the church. It was referred to the Appellate Tribunal (AT) for an opinion on that question. On 11 November 2020 the AT handed down its response to this reference.

This paper is designed to clarify the structure and institutional place of the judgment of the AT, to refer very briefly to some of the immediate responses to it and offer a possible way to respond to what is at stake in this for the Anglican Church of Australia.

At the same time, it serves to highlight the institutional character of the ACA within the spectrum of Anglican ecclesial patterns around the world. Anglican Ecclesiology has been much considered in recent decades. The Anglican Churches of the Anglican Communion have many things in common, but there are also significant differences about who decides what, where authority lies and how it is exercised, and the relation between clergy and laity in the structured life of the church. For example, the constitution of The Episcopal Church in the USA established its connection with the ‘One, Holy, Catholic, and Apostolic Church’ via membership of the Anglican Communion and by upholding and propagating ‘the Historic Faith and Order set forth in its Book of Common Prayer.’[2] The Australian model is often misunderstood. Some commentators use the phrase ‘loose federation’ as enough to end an argument about ecclesiology. In fact, there are numerous ways for a national church to be configured. This is even true in the case of an ecclesiastical province. This Wangaratta case reveals some interesting and significant elements in the configuration of the ACA that may be of interest in the broader study of Anglican ecclesiology.

1. THEN THERE WERE THE DIOCESES

The constitution for the ACA came into force in 1962 after long and difficult debate. In part this was because from 1847, when the diocese of Australia began to be divided into separate

[2] Church, *Constitution* p. 1. The New Zealand church establishes such a connection seeing itself as a branch of the United Church of England and Ireland as set out in a constitution first established in 1857. It also incorporates its prayer book into the constitution.

dioceses, these dioceses developed their own social, cultural, institutional and ecclesiastical character. This was shaped and influenced by the same kind of diversity in the separate colonies generally. When Victoria and South Australia were added to New South Wales and Tasmania, the Imperial government established the governor of NSW as the Governor General of Australia with a view to the creation of a national government structure. However, funds were not provided and the scheme came to nothing. Separatism became consolidated in both church and state. This context had significant implications for the church when it came to separating from the Church of England.

The Church of England in England was still part of the state when the British Government founded colonies in Australia. The Royal Supremacy still existed, though subject to the increasing power of parliament. The Church of England moved in stages from being the state church to being an Established Church. Steps to provide for any independent ecclesial self-government structures did not come until the twentieth century. Elements of the English Christendom linger on into the twenty first century. Even to this day an English bishop must wait upon the Queen and make an act of fealty to her before he or she can take up episcopal ministry. Despite the dramatic political changes in Australia from 1836, the bishops at their 1850 conference thought they were still bound hand and foot by the Royal Supremacy.

When the Australian Anglicans were faced with creating their diocesan structures from 1847 they did not have much help from the then existing English model. From 1850 they were all quite separated from the state and the Royal Supremacy had gone with coming of local representative government. In the second half of the nineteenth century local interests were bourgeoning.

These background issues help us to understand why the diocese was becoming the focus and essential unit of the church. As a consequence, in the debates that led to the formation of the present constitution the interests at play were those of the dioceses. The first General Synod met in 1872 with representatives from each diocese. A constitution was agreed and adopted in 1876. But it was a loose affair and was hindered by the continuing legal connection with English law and the decisions of English ecclesiastical and civil authorities.[3] That did not mean it did nothing. It provided a gathering in which common problems were shared and on occasion also meant having a united front in dealing with the English authorities, not least the Archbishop of Canterbury.

2. FUNDAMENTALS AND CHURCH IDENTITY

The first and unchangeable part of the constitution of the ACA is called the Fundamental Declarations, though it was initially called just Declarations. “Fundamental” was introduced in 1951, probably under the influence of the language of Archbishop Geoffrey Fisher who

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[3] See Robert S M Withycombe, 'Imperial Nexus and National Anglican Identity: The Australian 1911-12 Legal Nexus Opinions Revisited ', *Journal of Anglican Studies* 2.1 (2004), (62-80)

had visited Australia in 1948 and corresponded with the Constitution Committee following his visit. He had also sent them some 'suggestions' about a way forward with the constitution. The Fundamentals tradition in Anglicanism is quite important in these constitutional debates and it echoes a longer tradition of this motif in Anglican theology.[4]

In 1988 Stephen Sykes opened an important essay in which he provided a brief account of the use of Fundamentals in the Church of England in these words.

> Within Anglicanism there is a long tradition of direct appeal to the 'fundamentals' of christianity', or to the 'fundamental articles of the faith'….there are good reasons why the contrast between fundamentals and non-fundamentals found a ready home among Anglicans, and has been in use in various ways to the present day.'[5]

The identification of 'fundamentals' has a significant history, especially following the divisions between the protestant churches of the Reformation and the Roman Catholic Church. At issue in these arguments was the ecclesial standing and character of the Church of England. The Reformation Acts assert that the Church of England was a truly christian church and it was an independent church not subject to the jurisdiction of Rome. Relations between the Church of England and the Church of Rome had a long story going back to the earliest days of christianity in England. When Pope Gregory the Great sent Augustine to evangelise the English in the sixth century he encouraged him to use local practices to build the English church and made no requirement to follow Roman practices. The expansive reform movement of Pope Gregory VII in the eleventh century ran into King William I and any jurisdiction for the Pope was completely rebuffed. The saga had its ups and downs but lay Royal Supremacy continued and under Henry VIII reached full and overweening proportions.

The ecclesial and theological fracturing of Europe in the sixteenth century presented a serious ecumenical challenge. Many, but not all, of these national churches had connections with the state. How to conduct a conversation about the character and standing of the new churches was not straightforward. In this context the notion of 'fundamentals' became a useful category especially for the Church of England which retained some of the forms of the Roman church such as three orders of ministry.

Edward Stillingfleet, a prominent theologian, Dean of St Pauls and Bishop of Worcester, regularly used the category 'fundamentals'. In a long work in 1665 just three years after the 1662 Book of Common Prayer, he addressed a Roman Catholic writer who had demanded that the Church of England should have a list of doctrines that were essential to believe for

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[4] I am indebted to the excellent PhD thesis of Stephen Pickard (1990). *The purpose of stating the faith: an historical and systematic inquiry into the tradition of fundamental articles with special reference to Anglicanism*, Durham theses, Durham University. Available at Durham E-Theses Online: http://etheses.dur.ac.uk/6220/

[5] SW Sykes, 'The Fundamentals of Christianity', in S. Sykes, Booty, John (ed.), *The Study of Anglicanism*, pp. 231- 44 (London: SPCK, 1988) 232

being within the church and thus for salvation. In chapter IV, 'The Protestant doctrine of Fundamentals vindicated', Stillingfleet argued at length that for the Church of England the 'doctrine of Christ' is that doctrine that is necessary for salvation. It is what has been accepted in all ages and is found in the creeds.

> But by what peculiar Arts you can thence draw, that something else is necessary to be believed in order to Salvation besides what hath been owned as Fundamentals in all ages, I am yet to learn.[6]

This does not mean that Stillingfleet thinks that this is all that is believed in the Church of England. He is committed to the formularies as recently established by law in 1662. For the purposes of an ecumenical debate, in this case with a Roman Catholic, the christian identity of the Church of England is its commitment to the 'fundamentals in all ages'. This is a more expansive category and in practical terms provides a point of connection with other churches who are organised differently and with different doctrinal particulars.

For Stillingfleet, the doctrinal commitments of his 'particular national' church were the formularies promulgated after the Restoration. This particular pattern of uniformity goes back to Edward VI [7] and the documents are important instruments of that uniformity. Their authority comes from the crown in parliament. All elements were obligatory for the church whose membership was coterminous with the subjects of the crown. Each national church could be differently configured. These were formularies for a particular or national church, in this case the Church of England in England.

Stilllingworth's Roman Catholic opponent argued on the basis of the declarations of the Council of Trent that their propositions were all necessary for a church to be a true church, to be christian. It is a universal claim. There cannot be particular or national churches that legitimately differ from this. This is the claim of universal primacy. It was a vital issue at the time. With the plurality of churches so manifestly present, the first thing you want to know is whether this is a christian church. The English found an appeal to fundamentals of the kind referred to by Stillingworth to be very useful.

However, it should be noted that the fundamentals are not a brief statement of doctrines. Rather they are historical claims. Stilllingworth's form of words is a little different from those used in Section 1 of the ACA constitution. Stillingworth has 'necessary to be believed in order to Salvation … what hath been owned as Fundamentals in all ages'. The ACA constitution Section 1 has the ACA as part of 'the One Hoy Catholic and Apostolic Church of

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[6] Edward Stillingfleet, *A rational account of the grounds of Protestant religion being a vindication of the Lord Archbishop of Canterbury's relation of a conference, &c 1665. Early English Books Online Text Creation Partnership, 2011, http://name.umdl.umich.edu/A04486.0001.001,* accessed 2 January 2021.

[7] The longer history of this lay/clerical form of government, that is to say the English Christendom, goes back into the origins the English nation. See Bruce Kaye, *The Rise and Fall of the English Christendom. Theocracy, Christology, Order and Power* (London: Routledge, Routledge Contemporary Ecclesiology, 2018)

Christ, holds the Christian Faith as professed by the Church of Christ from primitive times and in particular set forth in the creeds known as the Nicene and the Apostles' Creed.'

Neither of these formulations lifts the material out of the particularities of history. Both trace it back to the earliest times and to Jesus Christ. This is not a set of particular doctrines or practices. It is a claim to beliefs and practices that have their origin in Jesus Christ and the apostolic period and thereafter what has been commonly held by christians. This sits alongside those beliefs and practices that might pertain in a 'particular' or national church. Thus, when Section 1 of the constitution of the ACA declares that it 'holds the Christian Faith as professed by the Church of Christ from primitive times …' it lays claim to be first and foremost and fundamentally a christian church. This is the model of the 'fundamentals' seen in Stillingfleet and points up the appeal to the early church by the English reformers. What is constant through this is the faith which, in Stilllingworth's terms, is 'necessary to be believed in order to Salvation' or in the terms of the ACA constitution a faith that includes 'the obligation to hold the faith'. It is the faith that identifies you a christian.

In any debate between churches that are not constitutionally or legally connected, the use of 'fundamentals' can have an important role in asserting, or demonstrating, the christian character of that church. This was precisely the situation at the formation of a constitution that would finally make the Church of England in Australia independent legally from the Church of England in England. Clarifying this situation was the key issue in the 'nexus' report [8] and central to the framers of the constitution of the ACA.

When separate churches in far flung English colonies which became in any sense independent politically, the assumed relationship of the Church of England with the sovereign power forced a reconsideration as to how such churches might frame their identity. This first occurred quite abruptly after the war of independence in the new separated United States of America and, more gradually and without a war, in the middle of the nineteenth century in Australia. It was the underlying key issue at the 1850 bishops' conference in Sydney – local provincial jurisdiction along with some continuing theological and ecclesial identity. The Nexus report in 1905 made it clear that there remained a legal connection between the Church of England in Australia and the Church of England in England.. A constitution creating a legal entity was necessary to deal with that remaining obstacle to create a 'particular or national' church in Australia. First, it was a christian church in Section 1, then in Sections 2 and 3 it had certain commitments that went beyond simply being christian. These are together the unalterable things in this church.

[8] Church of England in Australia, *Legal Nexus. Case with Opinion from Counsel in England and in the Commonwealth.* (Sydney: 1912)

3. FORMING THE ACA CONSTITUTION

The present Constitution began life in a serious way in the first decade of the twentieth century and went through five constitutional drafts each with significant differences (1926,1932, 1939,1946,1955) The approach to these drafts was full of tensions and generally based on each diocese trying to defend its position. In the reasons for her dissenting view in the AT Ms Davidson gives some detail of this in relation to the role of Archbishop Mowll in supporting a constitution. He knew there were strong voices in the dioceses against the constitution but he deployed his full support for it, notably in the name of relations with the welfare of the wider church. She quotes Mowll's appeal:

> I would be failing in my responsibility as the Diocesan if I did not take every precaution necessary to safeguard the tradition of the Diocese …We must therefore, approach this matter, having in mind the welfare of the wider Church in Australia, of which we are the mother Diocese, and at the same time, with the determination that the point of view this Diocese represents should be both recognised and safeguarded. [48-51]

Ms Davidson also refers to the role of TC Hammond who changed his mind about the constitution and advised Mowll that it should be supported. A crucial concern at this point was to defend the diocese against the use of mass vestments because they were seen to carry objectionable theological views. He concluded that recent changes in England declaring that these vestments did not carry any theological meaning meant that it would be better to rely on a local constitution that could be influenced in the present debates to form that constitution than an uncertain English church. This had been made clear by the Archbishop of Canterbury (Geoffrey Fisher) when he visited Australia in 1948.[9]

At the heart of the constitution is how far this tradition of christian faith, formed in the local particulars of England and its church, should be expressed in a quite different constitutional and cultural context and a quite different history of church development. That continuity and change puzzle inevitably focussed on Part I of the constitution. In the 1926 and 1946 drafts the BCP and Thirty Nine Articles were included in the Fundamentals, but in 1951 they were moved out of the Fundamentals into the Guiding Principles. Perhaps this decision was influenced by Fisher's visit and further correspondence. In his 'suggestions' he wrote of the Fundamentals (the term was only later changed to Fundamental Declarations.) that they were

> in a Part by themselves to show that they differ in character and purpose altogether from the second part which contains not what the Church essentially is, but how it governs itself. [10]

The language of 'Fundamentals' here reflects the language of the earlier English debates. It is an important distinction. The Fundamentals are what makes a church a christian church. The

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[9] J Davis, *Anglicans and their Constitution* 134
[10] Davis, *Anglicans and their Constitution* 138

other matters are what distinguishes a particular national church in its particularity. That highlights the significance of the title of the second part of the constitution – these are Ruling Principles. The Fundamental Declarations begin with the faith of the church in Section 1. Section 2 declares the reception of scripture and Sections 3 describes certain things the church will do. Section 1 defines the faith of the church in terms that resonate with the fundamentals usage in English theology. Here it used in a context where a break in legal connection is being established and in that sense it is similar to the ecumenical debates of the seventeenth century which were between churches located in different legal jurisdictions.

When Broughton Knox from Sydney unsuccessfully attempted 'to have the Book of Common Prayer and the Articles moved into the unalterable Fundamental Declarations chapter'[11] he was addressing this question. The reference to the Reformation documents stayed in the Ruling Principles. They contained material from the 'particular' or 'national' Church of England. The Fundamental Declarations included two Sections following the 'fundamentals' style definition of the faith of the church in Section 1. Section 2 refers to scripture in terms that resonates with Article VI in the Thirty Nine Articles, but it does not replicate the exact terms of that article. Both statements make it clear that scripture is both sufficient and the ultimate standard for faith, that is the faith that is necessary for salvation. Section 3 refers to more generally traditional material that resonates with the broad historical background of English christianity. These Sections state the intentions of the church and do not include any specific theological rationale for them.

Chapter II, The Ruling Principles provide the reference point for the forms that are to guide this 'particular national' church. They retain the historical documents of the Restoration but assert that the church 'has plenary authority at its own discretion to make statements as to the faith ritual ceremonial or discipline of this church and to order or revise such statements forms' … they are …provided they are … 'consistent with the Fundamental Declarations.'

Given the origins of the constitution and the strong and established independence of the dioceses in Australia, the constitution represents a series of compromises. On occasion it seemed like an ecumenical endeavour but in the end a national conclusion of sorts was reached. Of course, the dioceses retained extensive authority and independence. As a consequence, the ACA is really a loose federation of dioceses and the constitution sets out the terms of the union between the dioceses. When the constitution refers to the church it is referring to the institutional entity as set out in the constitution.

Appellate Tribunal as constitutional arbiter on interpretation of constitution

In the constitution the AT acts as a final court of appeal from diocesan and provincial clergy disciplinary tribunals and also as a court of interpretation of the constitution. It has only acted once in the first capacity but more often and more recently in the second capacity. Its task in

[11] Davis, *Anglicans and their Constitution* 156

this second capacity is essentially to answer an institutional question according to the terms of the constitution. No one's personal theological opinions are on trial here, least of all the members of the AT or individual members of the Wangaratta synod.

The question before the Appellate Tribunal was an institutional one - is the Regulation passed by the synod of Wangaratta inconsistent with the constitution.

4. THE STRUCTURE OF THE CONSTITUTION

The constitution is in two parts. Part I contains the Fundamental Declarations [1-3] which describe the identity and unchangeable commitments of the church and the Ruling Principles [4-6] which identify the ecclesiastical pedigree of the ACA and provide for some specific actions. Part II concerns the Government of the Church.

PART I

Chapter I Fundamental declarations

I have argued above that the tradition of 'fundamentals' in Anglican theology provides a valuable framework for interpreting the first Section of the constitution. Furthermore, that background amplifies the conclusions reached by successive judgments of the AT.

Chapter I of the constitution, Fundamental Declarations, identifies the christian faith to which the church is unchangeably committed. It asserts that this church is 'a part of the One Holy Catholic and Apostolic Church of Christ, holds the Christian Faith as professed by the Church of Christ from primitive times' and in particular as set out in the Nicene and Apostles creeds. This is an absolutely basic historical proposition. It means this is a christian church tracing its point of reference to the earliest times and to Christ. Section 2 further declares that it receives scripture as the ultimate rule and standard of faith. It identifies what you might need for salvation, but not necessarily all that you might want to know or even believe as a christian trying to live a christian life. The third declaration is what the church will do; it will obey the commands of Christ, teach his doctrine, administer his sacraments of Baptism and Holy Communion, follow and uphold his discipline, and preserve the three orders of bishops, priests and deacons. These items are stated in fairly general terms and no theological rationale or interpretation of them is included. These are simply said to be the things this church will do, not why or how they might be done. The AT judgement deals with each of these Sections

According to Section 66 of the constitution this chapter cannot be changed under any circumstances.

Chapter II Ruling Principles

The Ruling Principles (Sections 4-6) indicate how the church in its governmental decision-making is to be guided and refers to the historical pedigree of the church in the Church of England. They identify three documents, the Book of Common Prayer, the Ordinal for ordaining bishops priests and deacons, and the Thirty Nine Articles. These were key documents of the Church of England in 1788 when the Church of England arrived in the colony and derive from the Reformation period and the legislation at the time of the Restoration. The constitution specifically declares (Section 72) that in questions arising as to the faith, ritual ceremonial or discipline of this Church or as to the authority and duties of clergy 'nothing in this constitution shall prevent reference being made to the history of the Church of England in England to the same extent as such reference might have been made for the purpose of the Church of England in the dioceses of Australia and Tasmania immediately before the day on which this constitution takes effect.' The effect of this is to include the experience of the Church of England in Australia during the period when the Royal Supremacy had died and the dioceses established their own constitutions.

The particular historical character of these documents and the pedigree they refer to is clear in Section 6 which says that this church will remain in communion with the Church of England and churches in communion with that church so long as that 'is consistent with the Fundamental Declarations contained in this Constitution.'

Unlike the Fundamental Declarations, these Ruling Principles can be amended, though only with substantial requirements of agreement.(Section 67(c). The second paragraph of Section 4 deals with some practical matters about variations in liturgical use. Apart from this paragraph action taken under these Ruling Principles must in all respects be consistent with the Fundamental Declarations.

This foundational material makes it abundantly clear that it is the constitution that defines the institutional and legal form of The Anglican Church of Australia. The constitution took many years to settle and was strongly argued. It embodies compromises for the participating dioceses. and is not an attempt to formulate a perfect or complete form of christian faith or of the church. Rather it is a negotiated document for the circumstances of the time that elaborates a way of securing the 'fundamentals' and providing for a way of working together as a church within the tradition of faith formed in the history of the Church of England according to the Ruling Principles.

From the point of view of the constitution the Anglican Church of Australia is a loose federation of dioceses. That not only arises from the vested interests of the dioceses in the formulation of the constitution, but also from the very general character of the material in Chapter 1. That Section has the effect of leaving a great deal to be worked out when new questions about church life arise in the future.

Part II THE GOVERNMENT OF THE CHURCH

The first chapter in this part concerns bishops and asserts the foundational importance of the diocese.

> A diocese shall in accordance with the historic custom of the One Holy Catholic and Apostolic Church continue to be the unit of organisation of this Church and shall be the see of a bishop.

Chapters then go on to deal with the General Synod, the provinces and provincial synods, the dioceses and diocesan synods, the tribunals, the corporate trustees, the alteration of this constitution, and its operation.

Under the constitution, canons of the General Synod that affect ritual, ceremonial or good order and government, have no force in a diocese until they are adopted by that diocese. Thus, for example, the most recent Prayer Book passed by the General Synod is accepted and used in some dioceses but not in others Similarly, the General Synod canon authorising the ordination of women only applies in those dioceses that adopted it.

This element in the constitution guarantees the independence of the dioceses. It shows that in effect the Anglican Church of Australia is a relatively loose federation of dioceses. While this arrangement causes difficulties, it has contributed to the fact that so far the ACA has been able to avoid any significant constitutional split.

When coming to the theological evaluation of this arrangement it is significant that the church in this constitution is not the community of Anglicans in Australia. It is the institutions that are described in the constitution. However, any ecclesiology of Anglicanism in Australia needs to be aware of this distinction, not only in terms of identifying the body of believers who might be referred to as the Anglican church in Australia, but also in terms of the categories that might appropriately be applied to the institutions created under this constitution. This is not the same as the community of Anglicans across the country. Like all large communities its members are hardly ever present to each other in any significant numbers. Most communities to which we belong are not always immediately present to us. We see them occasionally. In a study of expatriate migrant groups Benedict Anderson[12] developed a notion of 'imagined communities' to describe communities that people felt strongly part of but which were only in part and on occasion visible to those belonging. The community of Australian Anglicans is somewhat like an 'imagined community' as identified by Benedict Anderson.

Of course, all the office holders in the institution are also at the same time members of the community, but as officers of the institutional church they exist to serve the community. That is the context in which to understand the significance of the fact that the constitution provides jurisdictional arrangements only for clergy but not for lay members of the church. Laity do

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[12] B Anderson, *Imagined Communities* (London: Verso, 1991)

have an institutional role in the government of the church as members of the General Synod and in the membership of some tribunals. Laity are also deeply involved in governance within dioceses though the governance of dioceses is not specified in the constitution.

The institutions envisaged in the following Sections of the constitution are really matters of how to get certain things done, principally the provision to the Anglicans in Australia of a disciplined ministry of word and sacrament and such other activities that from time to time are put in place by the General Synod.

With this general background and the shape of the constitution we can look more directly at the Wangaratta move.

5. THE WANGARATTA MOVE AND THE APPELLATE TRIBUNAL

Highly controversial and deeply felt issues have come to the surface now because in 2019 the diocese of Wangaratta synod agreed a regulation that provided for a Blessing of Persons Married According to the (Commonwealth) Marriage Act 1961 (which had been revised in 2017 to include same sex marriages). The regulation appealed to the General Synod Canon Concerning Services 1992 as the basis of their action. This 1992 General Synod canon had been previously adopted by many dioceses including Wangaratta, Sydney and others.

Accordingly, last year the Appellate Tribunal was asked:

> 1. Whether the regulation Blessing of Persons Married According to the Marriage Act 1961 Regulations 2019 made by the Synod of the diocese of Wangaratta is consistent with the Fundamental Declarations and Ruling Principles in the Constitution of the Anglican Church of Australia?
>
> 2. Whether the regulation is validly made pursuant to the Canon Concerning Services 1992?

The first question concerns the first two chapters of the constitution – the unalterable Fundamental Declarations, and the Ruling Principles.

The Appellate Tribunal is the final court of appeal under the constitution for church law and the current tribunal contains very senior legal and ecclesiastical people.[13] Its decision by a five to one majority was that:

> Wangaratta Diocese's proposed service for the blessing of persons married in accordance with the Marriage Act does not entail the solemnisation of marriage; is

[13] For the list see https://anglican.org.au/governance/tribunals/appellate-tribunal-current-matters/

authorised by the Canon Concerning Services 1992; and is not inconsistent with the Fundamental Declarations and Ruling Principles of the Constitution of the Church.

6. THE APPELLATE TRIBUNAL REASONS (11 November 2020)

(i) The Task of the Appellate Tribunal is Constitutional and legal

The reasons given by the Tribunal are closely argued and essentially legal in character. In that respect they follow a clear order as they deal with the issues involved in this reference. What follows here is a reasonably close summary with some comments. Square brackets refer to the clauses in the AT Reasons.

In the opening section they deal with introductory matters about the role of the AT and the general context of the reference. The AT was not set up to settle general doctrinal matters, much less factional disputes within the church. The AT is bound by the constitution.

In testing the crucial Section 5(3) in the Wangaratta Regulation that services under the regulation must not be contrary to or a departure from 'the doctrine of this Church' they are bound to treat this phrase strictly according to its meaning within the terms of the constitution. Humpty Dumpty reportedly once said that when he used a word it meant exactly what he chose it to mean. Generally speaking, he has been found to be mistaken about the nature of language and communication. However, in the very strict and particular context of this decision posed to the AT the meaning of the phrase 'doctrine of the church' means in this text exactly what the constitution says it means.

This is a very particular point and it is necessary to be clarified at the start because in general parlance, especially in a church, doctrine is used perfectly in clearly other ways. Various topics in theology are regularly spoken of in terms of a 'doctrine of…'. Even a brief inspection of a general theological handbook or library catalogue is evidence of this. The AT had to define doctrine as used in the constitution and in brief terms they conclude that there it means the 'Church's teaching on the faith which is necessary to salvation'.

The question before the AT clearly relates to issues of marriage and in particular same sex marriages since they are encompassed in the revised Commonwealth law on marriage in Australia. The AT briefly reviews salient issues in this background.

This preliminary material is very important because its sets out the terms of operation in the Reasons that follow. They are not asked to settle some general theological dispute; they are obliged to work within the terms of the constitution in answering their question. The meaning of doctrine in its constitutional setting must be determined by the terms of the constitution itself, even if that may be confusing for a general reader. This is a legal answer to a legal question about the constitution and the Wangaratta Regulation.

Having set out these parameters for their work the AT proceeds directly with the issues at hand.

(ii) The Canon Concerning Services 1992 and the Wangaratta Blessing Service (E) [39-134]

The General Synod Canon of 1992 was properly and unanimously passed by the General Synod and adopted by many dioceses including Sydney and Wangaratta. The Wangaratta Regulation was passed appropriately by the synod of the diocese. Attention is drawn to Section 5(3) and the wide discretion given to the minister and the constraint of not crossing the 'doctrine of this church'.

The issue of marriage is central to submissions in this case and the Tribunal therefore examines elements in the history of marriage law and practice in the Church of England from 1662-1962, being the period from the BCP up to the commencement of the Constitution of the ACA. This record of the practices and doctrines of marriage in the Church of England shows wide variety and often seemingly absolute authorities for practices that were changed in their application. The AT makes this observation in order to make a point about how to regard a theological account of marriage and the inalterability of current practices.

> The untidy history of the Church's grappling with the messages of Holy Scripture as regards liturgies and laws relating to marriage should caution against declaring that any aspect of "the doctrine of marriage" is clear beyond argument, eternally rooted in Scripture, and beyond reformation by the Church in light of deeper understanding of the teachings of Jesus Christ and of Holy Scripture. [126]

Of course, this does not mean that there are not important principles at work in the way the church has approached marriage or that there are not serious warrants for these practices. Clearly there are. It just means that the details of these practices are not unalterable in any constitutional sense in either the ACA or the Church of England. The AT makes it clear that the Wangaratta service of blessing is not a marriage service and the standing of marriages involved is not under consideration.

(iii) The Wangaratta Blessing Service is not "contrary to or a departure from the doctrine of this church. (F). [134-181]

The AT is addressing a basic constitutional question for this case - what is "the definition of 'Doctrine'". At the same time, they set out reasons to show that there is a clear tradition of interpretation on this matter. They provide extensive material to demonstrate the meaning of Doctrine in the constitution and also the AT precedents.

Clearly any word can have a range of meanings within its semantic field. This is particularly so with words that are commonly used and even more so when different usages of a word appear in debates on strongly held matters. Doctrine is such a word. However, the question before the Tribunal concerns the meaning in the constitution of the ACA. Not surprisingly the Tribunal carefully spells out what doctrine means 'within the four corners of the constitution'. They say that the meaning of doctrine in this constitutional sense 'is closely defined in 74(1). Unless the context of subject matter otherwise dictates, it means "the teaching of this Church on any question of faith"'. (143)

The judgement then tracks through the previous references to the AT in order to demonstrate that this interpretation is not new or unusual but rather in line with previous judgements of the tribunal.

In its 1987 *Report Re the Ordination of Women to the Office of Deacon Canon 1985,* the Tribunal (Archbishop Robinson dissenting) held that the said 1985 Canon was not inconsistent with the Fundamental Declarations or the Ruling Principles in the *Constitution*. There follows material from some of the separate reasons in this case. The material quoted by the Tribunal is extensive. It is sufficient here to quote Mr Handley QC, who at the time was Chancellor of the Diocese of Sydney. He took a broad historical view in relating Section 1 of the constitution and the definition in 74(1)

> Notwithstanding the importance of the issues before us, the strongly held views on all sides, and the fundamental nature of the theological and biblical arguments which have been raised, in my opinion the questions involved are not part of the Christian faith professed by the Church, they are not dealt with in the Creeds, and do not directly involve matters necessary for salvation. This question before us therefore does not involve any principle of 'doctrine' as that expression is used in the Constitution." (para 150)

In the same judgement Archbishop Rayner related. 74(1) with Section 2 on the description of canonical scripture (ultimate rule and standard of faith) and also Article 6 of the Thirty Nine Articles (contains all things necessary for salvation)

> 'Doctrine' must therefore be understood in the Constitution as the Church's teaching on the faith which is necessary to salvation. That faith is grounded in scripture and set forth in the creeds; and the Church's doctrine or teaching on that faith may be explicated and developed, provided it is always subject to the test of scripture

The AT then turns to the 1991 case. The Tribunal repeated its view of 1987 when they were again asked a number of questions on the ordination of women which provided the basis for the 1992 canon authorising the ordination of women.

The current Tribunal declared that it would not lightly depart from its earlier decisions on matters of constitutional import.(158). They repeat this point after considering some of the submissions made to them.

> We are not disposed to depart from the settled meaning of “doctrine” in the Constitution. Nothing has been put to us to justify such a step. The additional remarks in the following paragraphs add further explanation for the conclusion to which this Section of the Opinion proceeds.(166)
>
> In our view, the matters in the present reference do not involve issues of faith or doctrine properly so called any more than the dispute over female ordination. The contending views about “**blessing**” same-sex marriages are strongly held. But, with respect to some of the recent rhetoric, and the actions taken abroad by some bishops of this Church, the blessing of same-sex marriages does not [necessarily] involve denial of God or repudiation of the Creeds or rejection of the **authority** of Holy Scripture or apostasy on the part of bishops or synods prepared to support such measures. The history of the Church’s approach to many of the teachings about marriage in the BCP confirms that none of the BCP teachings about marriage are “teachings of the faith which is necessary to salvation”, to use the formulation of archbishop Rayner and Justice Cox. Nor do they engage matters dealt with in the Creeds or directly involve matters necessary for salvation, to use Mr Handley’s words (assuming to the sake of argument any conceptually different approach on his part). (para 180).

The Tribunal concludes that ‘doctrine’ must therefore be understood in the Constitution as the Church’s teaching on the faith which is necessary to salvation. Furthermore, this is the previously settled meaning. It is neither narrow nor novel.

Given this framework the Tribunal declares that there is no constitutional inconsistency with the Wangaratta canon. In a concluding summation they deal with the principle in the christian faith as professed from primitive times, Holy scripture and the injunction to obey Christ’s commands and teaching his doctrine. In these sections they respond to submissions received while holding to their argued position. They specifically respond to the reports of the Board of Assessors and the Bishops who had been asked some specific questions by the tribunal. The tribunal gives details of their response to these reports, though they note that these bodies were asked specific questions according to the procedure laid out in the canons.

(iv) The Christian Faith as professed from primitive times [185-192]

The argument so far has dealt with doctrine elements of Chapter I of the constitution, Fundamental Declarations Section 1. This Section also refers to the christian faith as professed from primitive times. They consider a history of marriage presented to them in a submission but point out that these issues are not in the category of a teaching on a question of faith in the sense of what is necessary for salvation.

(v) Holy Scriptures [193-230]

In relation to the second Section in the Fundamental Declarations on the reception of scripture the AT again points out that there is more in scripture than can be regarded as necessary for salvation. For those wishing to promote a **constitutional** view about homosexuality they need to do so in the context of the doctrine of the faith that is necessary for salvation. [188]

It is very important to notice the terms of the AT response to scriptural arguments about marriage and in principle other things. It is a category definition and really repeats material presented earlier in relation to marriage.

> [202]. Holy Scriptures contain doctrines and a whole lot more. Their messages about marriage and homosexuality are contested but they cannot be ignored on that account. But the Appellate Tribunal is not the place to make definitive rulings on such matters unless essential to do so in the exercise of its constitutional functions.

Two very important things are asserted here. First, scriptural material on marriage and homosexuality cannot be ignored simply because its meaning is contested. That would be an extraordinary proposition in a christian church, let alone the Anglican Church of Australia. Secondly, this really shows that these are subjects the require serious interaction and argument. They are arguments that belong under Part II of the constitution. That demarcation is stated by the AT in relation to what they are at liberty to deal with. The AT has constitutional functions and unless those functions specifically include consideration of disputed interpretations of scripture such matters are not their concern. If not theirs then whose? Clearly those who have been referred to earlier in this judgment, the laity and clergy of the ACA, or the General Synod. In other words, the body of the church in its life today.

(vi) Obeying Christ's Commands [240-253]

The AT points to contrasting views about what are the commands of Christ in the AT case of 1991 dealing with the ordination of women represented by Bishops Holland and Robinson..

They quote favourably a long section of Archbishop Rayner's reasons on this point in the course of which he states a view adopted by the AT.

> what have been taken in the New Testament itself and in the subsequent history of the Church to be commands of Christ have frequently represented the application of Christ's broad commands to particular people and particular situations. [242]

They go on to say that

> Insofar as these invoke the "Christ's doctrine" rather than the "Christ's command" arm of s 3 of the Constitution, all of these submissions proceed as if the constitutional definition of "doctrine" has no role to play. It is not open to the Tribunal to approach the constitutional issue in this manner. [246]

They conclude that they are not persuaded there is any "command of Christ" directly referable to this case.

(vii) By way of summary

The arguments and the material in these reasons are extensive and the legal reasoning tight and restrained. They basically flow from their decision to follow previous decisions of the AT in defining the Doctrine of This Church in tightly constitutional terms, 'within the four corners of the constitution.' They see that to be their constitutional responsibility. Essentially the argument is set by the reference to 'the doctrine of this church' in section 5(3) of the 1992 General Synod Canon Concerning Services of 1992. The Reasons are taken up with what is the doctrine of this church in the constitution and clarifying that over against other uses of the word. Clarifying confusion about this matter takes up quite an amount of space in these Reasons.

This definition of the doctrine of the church resonates closely with the tradition in Anglican theology of 'fundamentals' expounded earlier. Section 1 of the Fundamental Declarations reflects that mode of understanding. But that very context also points to the specific theological commitments and practices that rightly belong with 'particular' or, in the terms of the seventeenth century, 'national churches'. The Fundamental Declarations contain an extra two Sections beyond the first doctrine Section and the AT Reasons negotiate these Sections in the latter part of their argument. But these extra two Sections are more in the nature of statements of intent which define what this particular church is permanently committed to.

The Ruling Principles turn to the principles that are to guide the ecclesial processes of the church under this constitution. Here the historical pedigree of the Church of England comes to the fore, but it is not immutable. The first Section in the Ruling Principles declares that the church retains these Restoration documents but then asserts the church has plenary authority to do certain key things provided they are … 'consistent with the Fundamental Declarations.' The final test is the Fundamental Declarations and restated in each Section of the Ruling Principles.

It seems to me that the way Geoffrey Fisher characterised the special place of the Fundamental Declarations in the constitution is quite apt.

> In a Part by themselves to show that they differ in character and purpose altogether from the second part which contains not what the Church essentially is, but how it governs itself.[14]

7. INITIAL RESPONSES AND SOME ISSUES

This Opinion from the Appellate Tribunal has been much anticipated. Within the church it deals with a highly contentious subject, not just about attitudes to sexuality and marriage, but also the theological norms of the Anglican Church of Australia and the structure and operation of its constitution. The bishop of Wangaratta issued a short statement at the time of the release of the AT judgement saying the diocese had been affirmed by the judgement and could now go ahead. The Primate, Archbishop Geoff Smith, described the judgement as 'an important contribution to the ongoing conversation within the Church.' He pointed out that the judgement 'did not authorise any Anglican clergy to officiate at weddings other than those between a man and a woman.'

Other immediate contributors were less sanguine: "judicial innovation", " trajectory was disintegration"; "unity would be paper thin"; because the AT judgement "undermines the teaching of scripture it dishonours God". The advice to the AT from the Board of Assessors said it was clear that the teaching of the Bible was that the sexual union of two persons of the same sex was sin, and furthermore that persistence in such sin will incur the harshest of condemnations in scripture. In fact, "sexual union" was undefined in the advice of the AT and glossed over in many of the submissions. Neither did the advice, nor the submissions, address the possibility that the newly conferred status of legal marriage might impact upon this.

The AT warned that resolution or statements from bodies not subject to the constraint and freedoms of the constitution of the ACA need to be viewed with caution. That need is only amplified by the fact that the AT has now provided clarity about the "doctrine" focus of the constitution of the ACA. No doubt this is early days in responding to this judgement. Strong feelings are at play in this matter and they are not just about same sex marriage. Also involved are political considerations about the long-standing traditions of different dioceses which do not very often have to engage directly with each other.

They also touch on the place of the Anglican Church of Australia in the broader world of global Anglicanism. These gender issues have been convulsing the Anglican Communion for at least the last thirty years. Part of the swirl of factors in that "convulsion" have been cultural diversity and historical memories of individual Provinces. Also included in this wider scene is the GAFCON movement, not least in this instance, because of the significant roles of the diocese of Sydney in the beginning and maintenance of that movement. That is of course, the legitimate choice of the diocese, but for the purposes of the ongoing conversation within the

[14] Davis, *Anglicans and Their Constitution* 138

ACA it brings the influence of those other relationships into the frame on both sides of this debate and of people's reactions and their approach to the domestic debate.

The debate before the ACA concerns the meaning and operation of the constitution because that is the basis of the union between the dioceses that is the legal basis of this church's existence. For its own integrity the coming debate in the ACA will need to stay focussed on the actual issues within this church.

As these debates roll on some key issues will probably emerge and, in part, they are addressed in this AT judgement. I say in part because the AT makes it clear that their task is not to settle theological debates in the church. Their task it to answer questions put to them under the constitution of the ACA. Their task is an interpretative one that is both legal and constitutional.

On a number of occasions, the AT underlined this point. Early in their reasons they say

> 38. As long as constitutional boundaries are respected and existing laws obeyed, it will be up to the clergy and laity of the ACA to determine the Church's interaction with same sex attracted people and their families.

And towards the end they state more expansively.

> 277. The issue of approving the solemnisation of a same-sex marriage is not before the Tribunal. And, as will be apparent from our reasons, the Tribunal has not had to address the "merits" of blessing services or even the theology of blessing same-sex "coupling" beyond the inquiry as to whether it entails a relevant teaching on a question of faith. All we have done is to declare that the Synod of the Diocese of Wangaratta has not acted contrary to the *Constitution* nor contrary to the scope of authority given by the General Synod in 1992. All of the issues in this Reference are of a legal nature. No questions of fact or credibility are involved. Indeed, the reasons published above show that the matter has turned upon constitutional principles already decided by the Tribunal in the past.

Some have criticised the meaning of doctrine in the judgement as narrow, an innovation, or unworkable. The AT in its reasons goes to some length to point out the consistency between their reasoning and previous judgements in section E and elsewhere.

Many of the participants in this debate focussed on moral issues they saw as crucial to the matter. Many thought doctrine to be something akin teaching. The tribunal regularly referred to the constitutional meaning of doctrine, or one might say the way the word doctrine is used in this constitution. What the constitution means is of course the task of the Tribunal. This judgment makes a clear definition of doctrine in the constitution as those things necessary to believe to be saved. This is 'the Christian Faith' of the first Section of the constitution. The Tribunal shows that it is following previous judgements and reasons of the Tribunal. They declare that they do not intend changing the earlier interpretation given by the tribunal. They

give detailed evidence in support from previous judgements to demonstrate this tradition of interpretation.

I have tried above to show that this approach to the doctrine of the faith of a church is well known in Anglican history. It is particularly apparent in the debates with Roman Catholics in the seventeenth century using the notion of "fundamentals". Indeed, as illustrated above Edward Stillingfleet uses almost exactly the form of expression as appears in the Tribunal's reasons.

For the purposes of assessing this judgment I think time will reveal that what we have here is tight legal reasoning in relation to a legal question about the current terms of the constitution of the ACA and the regulation of the diocese of Wangaratta. That is quite a lot, but it surely is not enough. The AT judgement simply clarifies some terms and framework of the debate that now falls to the laity and the clergy of the ACA.

8. THE TASK IN FRONT OF US

The judgement and how we got to it raises some very serious questions on which people hold different strongly held opinions. Those divisions cannot be simply ignored. Excellent though the individual essays of the Doctrine Commission are, they take us only so far and much of the discussion proceeds on the basis of a meaning of "doctrine" quite removed from its constitutional use as now set out by the AT. The Introduction by the Chair of the Commission (Bishop Jonathan Holland) points out what the General Synod asked them to do and how they carried out this request. He also sets out what he thinks might be points of 'common ground' that seemed to emerge in the discussion. One essay did devote itself to how we might approach this conflict.[15]

These essays provide very useful material for the task that lies before us. In broad terms that task is how are we to respond to the constitutionally legitimate actions of the Wangaratta synod. In other words what can be done under the constitution to enable quite significant differences to be properly dealt with.

During the formation of the constitution there were very serious issues represented by the diocese of Sydney as to how their particular evangelical tradition at that time could be preserved. That was argued in terms of the continuity of the Australian Church with the Church of England. That issue then focussed on the liturgical use of the mass vestments which were seen as striking at the heart of the principles of the English Reformation teaching on salvation. This was indeed a critical matter both in itself and especially at that time. It was an intra church issue focussed on liturgical practice. The heat of that debate has diminished

[15] Stephen K. Pickard, 'Disagreement and Christian unity: re-evaluating the situation', in J. Holland (ed.), *Marriage, Same-Sex Marriage and the Anglican Church of Australia*, pp. 241-66 (Mulgrave Victoria: Broughton Publishing 2019)

and evangelicals in the Church of England have come to see that they could live with vestments in their church on the basis that by official declaration they had no theological significance.

The present conflict, however, is a matter of central moral significance and relates directly to the representation of christian faith in the wider community. It is not a question about relations between the ACA and another church. It is about the relation between the ACA and the host society and its law on marriage. Furthermore, it has to do with liturgy and what clergy can do. It is thus directly relevant to the function of the constitution.

As with any debate about a moral question in the ACA the role of scripture has had an important role in this discussion. It has been present in submissions, responses, public comment and of course in the essays of the Doctrine Commission. The AT engages with this topic only in brief terms in relation to references in the constitution relevant to the question at hand.

In the wider Anglican community in churches across the nation same sex marriage is a very present question. The cultural wave of change that brought this question to us is the same across the whole country and thus in every diocese. That is not a reason for every diocese doing the same thing, but it is an argument for sharing resources and insights. Respectful and charitable difference between dioceses is quite a different matter from determined independence.

This question is also quite important in the church in the sense that it is a touchstone for how we as christians and as a christian community seek guidance from the God whom we worship and the Christ we profess. Within that it is also an issue of ‘by what authority’ do we do these things, whatever policy we wish to advocate.

In other words, in this difference of convictions, we need to go beyond our respective views. We will need to engage with each other’s underlying assumptions and warrants. That requires patient listening and high levels of openness and trust. Such a process is in essence a form of theological work. As we examine these issues more deeply and in company with those who take a different approach, we will open up the possibility of better understanding and thereby see what is really at stake. In that way we might be better able to see ahead and what we might be able to do within the reasonably capacious terms of the federal union of the dioceses that provides the framework of our institutional church life in the ACA.

However, especially in the ACA, we need help in actually engaging with those with whom we disagree. In one sense history has not prepared us well for this challenge. Our loose federal structure has not forced us together very much and we have lived out of the past of our local independence. The present cultural challenge is much greater for us because of this history.

On the other hand, that history has left us with an organisational structure that enables very considerable local diocesan freedom of action within a loose federal institutional connection. That also means that we have the possibility of a wide degree of diversity between the dioceses.

One of the benefits of the AT judgement is that it draws attention to the very limited category of the fundamentals in Section 1 of chapter I, and also the absence of any rationale for the activity commitments in Sections 2 and 3 of chapter I in the constitution. The AT judgment has also drawn attention to the breadth of possibility allowed by the 1992 Canon on Services.

I drew attention earlier to a distinction between institution and community. The constitution describes the institution called the Anglican Church of Australia and describes how that institution operates and what it is committed to. That institution is not an end in itself, rather it exists to serve the very real 'imagined community' of Anglicans in Australia.

That, in part, is why the constitution provides jurisdictional arrangements only for the officers of the institution, that is to say the clergy. Their obligations to the communities around the country are set out in the formularies and canons of the General Synod and of the dioceses. That is one of the reasons why matters of 'ritual, ceremonial or discipline' are given such priority in the formation of canons. The task of the officers of the institution is to provide a disciplined ministry of word and sacrament. The constitution provides for an important role for lay people in the General Synod. They constitute a distinct House alongside those of bishops and clergy, but no disciplinary arrangements for lay people are set out in the constitution.

Relations within this community are more personal than the requirements for the officers of the institution. They are also more challenging for the lives of christians as they sustain their faith and live as witnesses of Christ in the broader society. It is in the daily lives of these Anglican christians that the cultural challenges are existentially encountered. The clergy have a stake in this matter because of their institutional obligations. But lay members of the church are the front line witnesses in the community and they also have a great deal at stake here. Their voice will need to be heard.

Almost as important in my view is how we reach any resolution on this question. I do not mean how do we find some kind of compromise to incorporate into our institutional life. That may be necessary, a good thing or neither of those. A compromise is not an end, though it might become a step towards an end. The end needs to be some kind of resolution that can lead on to a future that honours the fundamentals of the faith to which our Fundamental Declarations point, whatever that future might be. That requires a way forward that demonstrates and achieves some kind of ongoing pattern of relationships that is visibly christian.[16]

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[16] In this respect I am very sympathetic to the essay by Stephen Pickard in the Doctrine Commission collection . Stephen Pickard, 'Disagreement and Christian Unity: Re-evaluating the Situation' . in

9. WHAT IS AT STAKE FOR AUSTRALIAN ANGLICANS ?

The root question here in my view is our calling as Anglican christians to live in such a way that we are worthy witnesses to the Christ we profess. Of course, that is our constant vocation, but the present situation offers a particular and quite specific context for that calling. Here we have an institution, the Anglican Church of Australia, that exists to serve a specific community of christians. The host society is legally sympathetic in broad terms to the christian life we seek. It is a little different with the culture within which we live. It is more pervasively and subtly challenging to personal christian life and witness. It is the wave of cultural change, mostly in the western world, that has shaped the gender issues before us.

When approaching a question like same sex marriage in church it is immediately obvious that this is an institutionally framed question. The individual christian does not conduct weddings. Clergy as officers of the church do that. Furthermore, they do it as recognised representatives of the state in the terms of the current Marriage Act. By conducting the service, they in fact perform a legally effective act. This reflects something of the English tradition brought with the first colonists. In that respect it is a hangover from the past. It was not always so, nor indeed is it so everywhere. Nor is it inconceivable that it might be changed here.

Were it to be changed the question would be differently framed but the essential question would still be whether same sex marriages are deemed to be christianly defensible for the church in its institutionally framed corporate life. It is at this point that the question of what is a marriage comes unavoidably to the fore. How the question is framed is in itself important. For example; 'what is a theological account of marriage' or more particularly 'what is a theological account of a christian marriage', or more, what is a christian account of marriage for christians. Or how should christians conduct themselves in a marriage. Or what is a theological account of a marriage in which one of the parties does not profess christian faith, or how should a christian conduct themselves if they are, or plan to be, married to a non-christian. Or again what if, with a couple already married legally, neither party was christian but yet came seeking a blessing. How would we frame a theological response to that situation? These questions might well challenge some of our long-standing church practices in church marriages which may perhaps be no bad thing.

10. QUO VADIS ?

I think this is much too serious a matter to be dealt with at such short notice with any expectation of reaching a worthwhile resolution by the forthcoming meeting of the General Synod. The church is faced with a really serious issue and history has not enabled us to deal well or quickly with it. The way froward will take time and patience all round. Ideally, we should have a widespread discernment process.

Marriage, Same-Sex Marriage and the Anglican Church of Australia. Essays from the Doctrine Commission (Sydney: The Anglican Church of Australia, 2019)

The reference to the AT has had the effect of trying to deal with Wangaratta with a constitutional blunderbuss rather than to have an engaged and patient debate about the question. Serious engagement with each other's arguments is necessary to open up the underlying issues. Neither 'scripture says', nor 'new relationships need to be embraced for love of those involved' is adequate on their own as an argument. For the sake of the future of our witness in this country I hope we have a chance provided for a better and longer process. The nature of the question and its presence in our society and within the church means that any longer-term process would need to be shaped in a way that assures all involved that the question will be dealt with and not just deferred or walked away from.

The General Synod has developed some ways of dealing with highly contentious matters. There is provision for a different kind of debate in the Standing Orders that enables small group discussion introduced with speeches that focus on the issues at stake. Sometimes the synod has taken a two-step approach with a preliminary debate at one synod moving towards a decision at a following synod. Such a procedure would enable some serious conflict resolution processes to be put in place alongside some deeply engaged theological work. If that work were made available in the church at large it might add to the quality and possibilities of some future worth thinking about.

The appellate Tribunal has delivered a judgement as to the constitutionality of the Wangaratta Resolution for blessing marriages made under the revised Commonwealth Marriage Act. No doubt there will be a lot of public and private discussion and argument about this. For my part I think the judgement will hold up under any criticism. It seems to me to be quite clear that the Fundamental Declarations are the ultimate point of reference constitutionally. It also seems t me that it is misguided to think that the Fundamental Declarations are the only guidance available to the church in making decisions about this matter. The Ruling Principles provide a wealth of material for ways of approaching particular questions. The church has plenary authority to make those decisions subject the broad umbrella of the Fundamentals. There is plenty of room under that umbrella.

The question then is what should we in the church do at this time. The Primate has wisely called for calm and continued conversation while looking to the possibility of something at the General Synod meeting in May.

There is a great work to be done here. The General Synod cannot do it directly, nor indeed the Standing Committee. But they can and surely must put in place the resources and plans for this task to be engaged effectively. There is a lot at stake for the Anglican Church of Australia. We do have the resources in the church community to enterprise what needs to be attempted. The most important challenge is how we as an Anglican Church can show what it is to be a christian community by the way that we do things and the way that we treat each other and our fellow Australians; a community of people who are manifestly disciples of Jesus Christ, the Son of the Living God.

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