

53/95 Church Ministry (Baptism) Ordinance 1995

(A report from the Standing Committee.)

Introduction

1. Resolution 53/95 reads as follows -

“That this Synod defers the matter of considering assent or dissent to the Canon P5 and asks the Archbishop-in-Council to appoint a committee to produce a report for the consideration of the Synod.”

On 26 February 1996 the Archbishop-in-Council appointed a committee comprising the Registrar and the Dean to prepare a draft of the report required by the resolution.

2. On 17 May 1996, the Deputy Chairman of Committees submitted a report to the Standing Committee on progress to date in Synod's consideration of the Bill. It is worth noting that Schedule I is Canon P5, 1992: in its report to the General Synod Standing Committee prior to the 1995 session of General Synod, the Canon Law Commission of General Synod indicated that, in light of reports on the bill from several dioceses, it intended to bring amendments to the Provisional Canon to the General Synod: there was insufficient time for the Commission to do that in 1995.

Revision of Canon Law

3. The five bishops who met in Sydney in 1850 expressed the opinion that the Canons of 1903 were binding, though they acknowledged that some could not be literally complied with. However, they also concurred in *thinking that a revival and fresh adaptation of the Canons to suit the present condition of the Church is much to be desired.....*

4. In 1981 the Canon Law Commission recommended to General Synod that the old Canon Law be thoroughly revised: the General Synod concurred and gave the Commission the task of preparing a revision.

5. The Commission began its task by considering the possible ways of revising the Canons of 1603. For a number of reasons mostly to do with the nature of Australia and the Australian Church, the Commission decided that the only practical approach is *to provided a basic framework of rules which are likely to be accepted across Australia and to leave each diocese to supplement those rules as it thinks fir having regard to its particular circumstances and needs.*

6. At least in the first instance, it was not the intention of the Commission to change the law, but to revise the language in which it was expressed, to adapt it to modern circumstances and to consolidate it in the one place. The Commission acknowledged that it *did not know and could not predict the reaction of the Church to the repeal of the Canons of 1603 and the replacement of those Canons with new rules calculated to be of relevance and helpful throughout Australia in the last decade of this century and into the next century.* That reaction could only be know

as bills to repeal the Canons of 1603 and to enact new laws were put to General Synod and, if passed, considered by diocesan synods. The process began in 1985, and Canon P5 of 1992 is part of that ongoing process.

Existing Law

7. At certain points in the debate on Canon P5 in the Sydney Synod in December 1995, it appeared that some members believed the Synod had a *tabula rasa*, that for the first time the law and practice in this diocese was being defined and that the Synod was entirely free to define the law as it saw fit. This is not the case.

8. The law of the Anglican Church of Australia with regard to baptism has its origins in the law prior to the Canons of 1603. In general terms, all law prior to 1603 has been repealed. There are occasions, however, when pre 1603 law gains a life of its own after 1603 through the decisions of the courts. An example is the provision for a baptism to be conducted by the Church Wardens in the absence of a clergyman.

9. It is however to the Canons of 1603 as amended to which one principally looks to discover the written law of the Church in this matter. The Canons of 1603 are to be read in light of the provisions of the Act of Uniformity and the *Book of Common Prayer* of 1662. Since then there was no new legislation until the introduction of *An Australian Prayer Book* and then the passage of the Godparent's Canon of 1977.

The rubrics from the *Book of Common Prayer* are as follows

Public Baptism of Infants

¶ *The people are to be admonished, that it is most convenient that Baptism should not be administered but upon Sundays, and other Holy-days, when the most number of people come together; as well for that the Congregation there present may testify the receiving of them that be newly baptized into the number of Christ's Church; as also because in the Baptism of Infants every Man present may be put in remembrance of his own profession made to God in his Baptism. For which cause also it is expedient that Baptism be ministered in the vulgar tongue. Nevertheless, (if necessary so require,) Children may be baptized upon any other day.*

¶ *And note, that there shall be for every Male-child to be baptized two Godfathers and one Godmother; and for every Female, one Godfather and two Godmothers.*

¶ *When there are Children to be baptized, the Parents shall give knowledge thereof over night, or in the morning before the beginning of Morning Prayer, the Curate. And then the Godfathers and Godmothers, and the people with the Children, must be ready at the Font, either immediately after the last Lesson at Morning Prayer, or else immediately after the last Lesson at Evening Prayer, as the Curate by his discretion shall appoint. And the Priest coming to the Font, (which is then to be filled with pure Water,) and standing there, shall say*

¶ *It is certain by God's Word, that Children which are baptized, dying before they commit actual sin, are undoubtedly saved.*

¶ *To take away all scruple concerning the use of the sign of the Cross in Baptism; the true explication thereof, and the just reasons for the retaining of it, may be seen in the xxxth Canon, first published in the Year MDCIV.*

Private Baptism of Children

¶ *The Curates of every parish shall often admonish the people, that they defer not the Baptism of their Children longer than the first or second Sunday next after their birth, or other Holy-day falling between, unless upon a great and reasonable case, to be approved by the Curate.*

¶ *And also they shall warn them, that without like great case and necessity they procure not their Children to be baptized at home in their houses. But when need shall compel them so to do, then Baptism shall be administered on this fashion:*

10. In the Sydney Synod debate on Canon P5 in December 1995, some members appeared to believe that a clergyman is at liberty to refuse to baptise a child, on the ground of the clergyman's perception of the parents' defective Christian commitment: that at least is the implication of number of the amendments on the notice sheet. A clergyman's obligation is spelled out in the third rubric of the Service for 'The Ministration of Public Baptism of Infants' in BCP. Canon P5 1992 diminishes that obligation: 'due notice' (Section 3) is to be given and a clergyman may delay the baptism for the purpose of instruction, consultation with another clergyman or due to the lack of appropriate godparents.

11. Arguably, the obligation imposed on a clergyman by *BCP* arose from the social conditions of sixteenth century England: the Church of England was the English people at prayer; the Church of England saw itself as offering Christian ministry to a Christian community. That understanding is not, however, only fortuitous. Anglicanism has long been committed to an Augustinian, rather than a Donatist, view of the church - that is, to an understanding of the church as a 'mixed body' including both believer and non-believers, rather than a 'society of saints' from whose ranks those who are yet to come to the faith or whose faith is faltering or uncertain are excluded as a matter of principle.

12. Social conditions have changed: the church is no longer situated within a largely settled Christian context and primarily concerned with pastoral care and teaching. That change needs to be addressed, but not in isolation from Anglicanism's longstanding self understanding.

13. Nor ought it simply to be assumed that individual dioceses are free to enact their own legislation. The powers of individual dioceses to enact their own legislation and the relation of those powers to the powers of the General Synod are still being refined. In its report to General Synod in 1992, the Canon Law Commission said *The Commission has not examined each of the suggested canons against each diocesan*

constitution but doubts if much of the subject matter would be within the legislative competence of some diocesan synods.

Desuetude

14. While hard to define in detail, desuetude is the ceasing of law to apply due to inaction and lack of operation. A possible example concerns the provision of the Canons of 1603 regarding a clergyman's nightcap (head gear, not brandy). It could be said that this is no longer a law of the Church through lack of observance.

15. There is a view that desuetude ceased to apply in the Church of England at the time of the Reformation. However, if that is not so there are four conditions which need to be met desuetude to apply in any particular situation.

- (a) The first is **time**: how long has the law not been observed and not applied? There is no clear indication as to how long enough.
- (b) The non use, the inoperation of the law has to be **without objection**. It is not adequate simply that the law has not been observed. It is not adequate simply that the law has not been observed. It is necessary that none should have objected to that non observance.
- (c) The non use or deviation from the law has to be almost **conscious**, deliberate and intentional. It is for that reason that there is uncertainty whether the Canon about the clergyman's nightcap has ceased to be a law: it is probable that it fell into disuse simply through custom and fashion rather than through deliberate intent and conscious deviation.
- (d) There is a question of **area** or geography. Over what area of the church is it sufficient for the non observance to have taken place? Since prior to 1961 the Australian Church was part of the Church of England, unless non observance also occurred in England, it would not be sufficient for it simply to have taken place in Australia. Since 1961 the question has become: Over what area in Australia must there be non use - the whole of Australia, a province or a diocese? The answer is probably, over a province.

Desuetude and the Baptism of Allcomers from the Parish

16. It is said by some that the provisions of the Canon of 1603 and the expectations of the Book of Common Prayer, that a clergyman will baptise all who ask, is no longer a law of the Church of Australia. There are number of clergymen, certainly in Sydney and probably elsewhere, whose practice is only to baptise the children of those who attend the local church. It is alleged that because of the principle of desuetude this practice is lawful.

17. To see whether that is so, it is necessary to apply the four criteria of desuetude to the law of baptism.

- (a) **Time**. Since it is the norm in England still for those who ask to have their children baptised, and indeed the English Church has re-

enacted that provision, the relevant period can only be since 1961. It is hard to say when the more exclusive view came to be held and acted upon. It would appear to be of comparatively recent origin.

- (b) **Objections.** While the practice of only baptising the children of attenders is common, and arguably even widespread, it is certainly not without objection. Lay people and bishops have from time to time expressed their disagreement with the practice.
- (c) **Motive.** While those who decline to baptise infants whose parents are not believing church goers do so on the basis of an understanding of the Scriptures and from a desire to act biblically, it is not clear what the specific motivation is. Arguably, it is a conscious deviation - a non observance of deliberate intent, a statement that the provisions of 1603 are wrong. However, it is at least as likely that it is an act of ignorance, that those who practise this particular kind of baptismal discipline are ignorant of the requirements of Canon Law, rather than deliberately disobedient.
- (d) **Area.** Whether one considers the Diocese of Sydney or the whole province of New South Wales as the appropriate area in which to look to see whether non observance to the old law is the norm, the observation would be that mostly in Sydney and almost totally so elsewhere in the province, the old law is observed.

18. While desuetude may operate with regard to other aspects of the law of the Church it does not apply with regard to this aspect of baptism. The practice of confining baptism to the children of those who attend church fails entirely to meet two of the four criteria of desuetude (those to do with time and with motive). It is the case that the provisions of the Canons of 1603, as refined by subsequent legislative changes in 1662 and then in the 1970s and 1980s are the law of the Church in this Diocese.

Canon 30 and the Sign of the Cross

19. Clause 4 (2) of the Ordinance, and Clause 15 of Schedule 1, repeal Canon 30 of 1603. Clause 10 of Schedule 1 refers to the conclusion of Canon 30. In the December 1995 Synod debate the view was expressed that Clause 10 of Schedule 1 is an inadequate summary of Canon 30.

20. Note 3 on page 822 of *A Prayer Book for Australia* takes up Canon 30: whether it is an adequate summary is for others to say. It has the advantage of being more accessible than Canon 30, though the Notes are not printed in the Shorter Edition of *APBA* arguably the Edition to which most will have access.

Conscience and the Law of Baptism

21. In the debate on Schedule 2, the point was made that for some clergy it is a matter of conscience that they should not be required to baptise an infant unless they were confident that the parents or guardians demonstrated their personal commitment to the Lord Jesus Christ.

22. Conscience is a very significant matter. However, it needs to be noted that Canon P5 of 1992 imposes no greater burden, indeed it is arguably a lesser burden in this regard, than the existing law as reflected

in the Canons 1603 and the *Book of Common Prayer*. It could be argued that the time for crises of conscience in this matter was at the point a person applied for ordination into the Anglican Church: the obligation to baptise has always existed.

23. There is however another conscience, that of the Archbishop. When he became diocesan, he undertook to preserve the law of the church. It is a matter of conscience to him that he should keep that undertaking.

24. In any further debate on this subject, it will be important for Synod to bear in mind this potential conflict between two consciences. If the law in this area were duly and properly changed, then presumably the Archbishop's conscience would be satisfied: if it is not, and some cannot in conscience observe the law as it is and always has been, then arguably it is for them to consider their position.

Recommendations

25. It seems unlikely that the Synod will in the first instance adopt Canon P5 without significant amendment. A different course may be for the Synod to debate several matters of principle, in particular the qualifications for baptism and Canon 30.

26. Depending on the outcome of those debates, it might then either adopt Canon P5 or send a report to General Synod expressing its misgivings about Canon P5.

For and on behalf of the Standing Committee

BOAK JOBBINS

3 September 1996