

## Same-Gender Blessings and Church Canons

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### Introduction

The 77<sup>th</sup> General Convention, which will meet in Indianapolis in July of 2012, will face a number of complicated questions that have canonical implications. Among them will be the consideration of a proposal to authorize trial use of a rite for blessing same-gender relationships.<sup>2</sup> One way to consider the various implications of this proposal is to ask four questions: (1) what is being proposed? (2) how does this proposal relate to the church's previous experience with trial use? (3) What precedent is there for that which is being proposed? and (4) what options are there for action by future General Conventions?

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<sup>2</sup> Authors in recent years have been inconsistent in the use of the terms "same-sex" and "same-gender." Some advocates of the first term argue that gender is a grammatical concept that should not be applied to human beings; some advocates of the second term suggest that gender is an appropriate descriptor of social roles, which may or may not (because of transsexuality) equate with biological sex. In recent years, however, the General Convention has used the terms as synonyms. See, for example, General Convention resolution 2003-C051 which refers to "same-sex unions" in the text and to "same-gender relationships" in the title. For the purposes of this article the term "same-gender" will be used throughout, since it is the term favored in the report of the Standing Commission on Liturgy and Music.

### What is being proposed?

The proposal concerning the blessing of same-gender relationships (proposed resolution 2012-A049) is found near the beginning of the report of the Standing Commission on Liturgy and Music in the *Report to the 77<sup>th</sup> General Convention, Otherwise Known as the Blue Book* (2012).<sup>3</sup> The proposed rite is contained in a subsection of the Standing Commission's report that is titled *Liturgical Resources I: I Will Bless You and You Will Be a Blessing*. Proposed resolution 2012-A049 asks General Convention to "commend" the subsection for "study and use," but it does not explicitly call for re-publication as a separate document. The prefatory words of the title, however—"Liturgical Resources I"—imply publication as an initial volume in a projected new series of "Liturgical Resources." This series would apparently be distinct from the current *Liturgical Studies* series and from the *Enriching Our Worship* series.<sup>4</sup> No explicit explanation is offered in the *Blue Book* report as to why a new series is needed.

*Liturgical Resources I* contains an introduction, appendices, and five sections: a rationale for blessing same-gender relationships, an opinion on the permissibility of such blessings under civil and canon law, educational materials to be used in preparing a couple for a blessing, a liturgical rite, and a guide intended for group discussions.

Proposed resolution 2012-A049 makes four proposals about the use of this material in *Liturgical*

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<sup>3</sup> Standing Commission on Liturgy and Music, Report in the *Report to the 77<sup>th</sup> General Convention, Otherwise Known as the Blue Book: Reports of the Committees, Commissions, Agencies, and Boards of the General Convention of the Episcopal Church* (New York: the Office of General Convention of the Episcopal Church, 2012), 168.

<sup>4</sup> Church Publishing has issued four volumes in the *Liturgical Studies* series (1994-2003) and five volumes of the *Enriching Our Worship* series (1998-2009).

*Resources I*, which are contained in four resolve clauses. The four resolves are as follows:

*Resolved*, the House of \_\_\_\_\_ concurring, That the 77th General Convention commend “Liturgical Resources I: I Will Bless You and You Will Be a Blessing” for study and use in congregations and dioceses of The Episcopal Church; and be it further

*Resolved*, That the 77th General Convention authorize for trial use “The Witnessing and Blessing of a Lifelong Covenant” from “Liturgical Resources I: I Will Bless You and You Will Be a Blessing” beginning the First Sunday of Advent 2012, under the direction of a bishop exercising ecclesiastical authority; and be it further

*Resolved*, That bishops, particularly those in dioceses within civil jurisdictions where same-gender marriage, civil unions, or domestic partnerships are legal, may provide generous pastoral response to meet the needs of members of this Church, including adaptation of the liturgy and declaration of intention contained in “I Will Bless You and You Will Be a Blessing”; and be it further

*Resolved*, That the Standing Commission on Liturgy and Music develop an open process to review “I Will Bless You and You Will Be a Blessing,” inviting responses from provinces, dioceses, congregations, and individuals from throughout The Episcopal Church and from throughout the Anglican Communion, and report to the 78th General Convention.<sup>5</sup>

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<sup>5</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 168.

Given the more restrictive language that follows, the “study and use” in the first resolve clause seems to refer to use of *Liturgical Resources I* in discussion, education, and reflection rather than in worship. The second resolve clause authorizes liturgical use with two important qualifications: it is to be used after Advent 2012 and is to be used “under the direction of a bishop exercising ecclesiastical authority.” The third resolve clause allows bishops to adapt the suggested liturgical rite. The fourth and final resolve calls upon the Standing Commission on Liturgy and Music to “develop an open process” of review.

The rite itself is titled “The Witnessing and Blessing of a Lifelong Covenant: Liturgical Resources for Blessing Same-Gender Relationships.” The service is preceded by a set of rubrics “concerning the service.” It is then structured in a manner roughly parallel to the Celebration and Blessing of a Marriage in the *Book of Common Prayer* (1979).

The covenant blessing opens with a gathering rite that includes an exhortation about the “union” for which the couple seeks a blessing. The gathering rite lacks any parallel to the marriage service in the *Book of Common Prayer*’s inquiry as to whether the couple or congregation know any “just cause why they may not lawfully be married.” It also lacks any parallel to the promises of betrothal in the marriage service (i.e. the statement of intention to marry that once marked the beginning of engagement but which since 1549 has taken place at the beginning of the marriage service). It is in the marriage service’s betrothal that the promises of exclusivity are made: “Will you....*forsaking all others*, be faithful to him/her as long as you both shall live?”<sup>6</sup>

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<sup>6</sup> *Book of Common Prayer* (1979), 424 (emphasis added).

Not all of the material absent in the gathering is missing from the covenant blessing as a whole. Portions of material parallel to the betrothal in the *Book of Common Prayer's* marriage rite are found later in the service in a section titled "The Witnessing of the Vows and the Blessing of the Covenant." There is a statement there of the intention to enter a holy relationship, as well as the community's promise of support and an optional presentation.

The gathering rite is followed by the Ministry of the Word. Four possible collects are suggested, the first of which is based upon the collect in the *Book of Common Prayer's* marriage service. Five possible Old Testament lessons (none of which are suggested in the marriage service), 10 Psalms (including 2 of the 3 in the marriage service), 8 New Testament lessons (including 4 of the 5 in the marriage service), and 5 Gospel lessons (including 2 of the 5 in the marriage service) are suggested. The rubric that proceeds the lessons makes specific reference to circumstances in which the rite is celebrated at "the principle Sunday worship of the congregation," a situation to which the *Book of Common Prayer's* marriage service makes no explicit reference.

"The Witnessing of the vows and the Blessing of the Covenant" follows the sermon. As noted above, this section of service contains material located in the betrothal in the marriage service: the indication of intention to live in a holy relationship, the declaration of community support, and an optional presentation. It also contains a set of prayers, which in the case of the marriage service follows the nuptial vows.

Intention to enter into a holy relationship is indicated by a declaration and a pair of questions:

*Presider:* N. and N., you have come before God and the Church to make public your commitment to one another and to ask God's blessing.

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*The Presider addresses one member of the couple [and then the other].*

*Presider:* N., do you freely and unreservedly offer yourself to N.?

*Answer:* I do.

*Presider:* Will you live together in faithfulness and holiness of life as long as you both shall live?

*Answer:* I will.<sup>7</sup>

This exchange does include the intention to live “in faithfulness and holiness of life as long as you both shall live.” The explicit promise to forsake all others that is found in the betrothal in the *Book of Common Prayer* marriage rite is found later in the commitment section of the service.

A set of petitions for the church and the world, and the Lord’s Prayer follow. The petitions are roughly parallel to the prayers of people in the marriage service.<sup>8</sup> The petitions include, however, an optional set of additional petitions based on themes in the *Book of Common Prayer’s* baptismal service: “For those who have been reborn and made new in the waters of baptism...for those who seek justice, peace, and concord,” etc. A concluding collect, for which there is no parallel in the marriage service, asks that the couple be given “a share in the saving work of Jesus.”<sup>9</sup>

The service concludes with an act of commitment, a blessing of rings or symbols, a pronouncement, a priestly blessing, the peace, and directions for the celebration of the Eucharist. The act of commitment includes a promise to “honor and keep with the Spirit’s help: forsaking all others, as long as we

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<sup>7</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 244.

<sup>8</sup> *Book of Common Prayer* (1979), 429-30.

<sup>9</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 246.

both shall live." After the blessing of rings or other symbols as "enduring signs of the covenant N. and N. have made this day," the presider announces "that they are bound to one another in a holy covenant, as long as they both shall live." In the blessing, the priest gives thanks for "the covenant of faithfulness they have made," asks for pouring out of the "abundance of [the] Holy Spirit upon them," invokes the name of the Trinity to "bless, preserve, and keep" them, and asks that God make them "a sign of the loving-kindness and steadfast fidelity manifest in the life, death, and resurrection of our Savior." The optional postcommunion prayer that is included for the celebration of the Eucharist gives thanks for the example of "holy love" provided by the couple.<sup>10</sup>

The rite does not include any parallel to the publication of the bans in the Marriage Service.<sup>11</sup>

#### **Previous experience with trial use**

Prior to 1964, the General Convention approved changes in the text of the *Book of Common Prayer* without any prior liturgical use. Texts were circulated for discussion and study, but they were not actually employed in worship until authorized by two successive sessions of General Convention. This situation changed in 1964 with the adoption of an amendment to article x of the Constitution of The Episcopal Church, which deals with revisions in the *Book of Common Prayer*. The new provision, which had been proposed and adopted on first reading in 1961, expanded the article to include a section on "trial use throughout this church." This new section authorized members of the church to use "a proposed revision of the whole Book [of Common Prayer] or any portion therefore, duly undertaken by the

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<sup>10</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 247-49.

<sup>11</sup> *Book of Common Prayer* (1979), 437.

General Convention.”<sup>12</sup> The intent was that the people of the church use and reflect upon the proposed material for a specified period of time, as steps in its improvement and eventual adoption. It was this alteration in article x that made trial use of the *Liturgy of the Lord’s Supper* (1967), *Services for Trial Use* (“the Green Book,” 1971), and *Authorized Services* (“the Zebra Book,” 1973) possible in the years leading up to the adoption of the *Book of Common Prayer* (1979).

The General Convention of 1982 made a further change in provisions concerning the liturgy. That convention added an oblique reference to two other liturgical volumes in Canon II.3 “Of the Standard Book of Common Prayer.” That canon had been amended in 1931 in response to the *American Missal* in order to forbid publication of the prayer book or portion of the prayer book in a volume that “contains or is bound up with any alterations thereof or additions thereto, or with any other matter, except Holy Scriptures or the authorized Hymnal of this Church.”<sup>13</sup> The 1982 convention added a phrase to the canon with precisely the opposite intention of the 1931 revision—i.e. as a means of authorizing certain liturgical texts outside of the *Book of Common Prayer* rather than preventing them. It did so by expanding the list of works that might be bound with the prayer book to include “material set forth in the Book of Occasional Services and The Proper for the Lesser Feasts and Fasts.” The expansion of the canon made clear what was not otherwise to be found in the canons—i.e. that General Convention could “authorize from time to time” editions of the *Book of Occasional*

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<sup>12</sup> Constitution of the Episcopal Church, article x, section b.

<sup>13</sup> Edwin Augustine White and Jackson A. Dykman, *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America otherwise known as The Episcopal Church*, 1981 edition, 2 vols. (New York: Seabury Press, 1982), 1:449-50.



*Services and Lesser Feasts and Fasts*.<sup>14</sup> Unlike the prayer book, the material in the two volumes would be adopted or changed by a single General Convention.<sup>15</sup>

Adoption of an approved edition of the *Book of Common Prayer* in 1979 and the insertion of a reference to the *Book of Occasional Services and Lesser Feasts and Fasts* in the canons in 1982 did not, however, bring an end to all trial use. On the contrary, every convention since 1979 has approved some text—ecumenical proposals, new pastoral rites, proposed additions to the church calendar, rites in which the use of male and female language has been reworked—for trial use. The most notable, but by no means sole, example of this post-1979 trial use has been the *Enriching Our Worship* series, which has been repeatedly approved by General Conventions since 1997 and now includes 5 separate volumes.

General Conventions have, however, been somewhat uncertain about this post-1979 trial use. Some have argued that trial use is only appropriate as part of an explicit program of prayer book revision. According to this theory, long-term use of texts apart from formal preparation of a new edition of the *Book of Common Prayer* falls outside of the provisions of article x of the Constitution. The General Convention of 1991 apparently accepted this argument and offered a solution: it adopted resolution 1991-A121, which would have added a new category of liturgical material to article x of the Constitution: “forms of worship on an

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<sup>14</sup> General Convention, *Journal*, 1982, C-8.

<sup>15</sup> The addition to the canon made no explicit reference as to how these works were to be approved. Prior to the 1982 canonical change, however, single sessions of General Convention had already approved publication of *Lesser Feasts and Fasts* (first edition, 1963), the *Book of Occasional Services* (first edition 1979), and its predecessor *The Book of Offices* (first edition 1939). This practice of action by a single convention continued after the adoption of the canonical change.

experimental basis.”<sup>16</sup> The 1991 General Convention began to use this category even though a new constitutional change required approval by a second convention; it adopted resolution 1991-A115 authorizing experimental use of *The Common Baptismal Liturgy* of the Consultation on Common Texts.<sup>17</sup> The action turned out to be premature. The General Convention of 1994 rejected the proposed constitutional revision for worship on an experimental basis, when it came up on the required second reading.

Subsequent sessions of General Convention have responded to the rejection of the category of experimental use in one of two ways. The first strategy has been simply to disregard the action of the 1994 convention. The convention of 2006 adopted resolution A067-2006, for example, approving the “experimental use” of a set of liturgies related to rites of passage<sup>18</sup> At the upcoming General Convention, the Standing Commission on Liturgy and Music is following suit, offering resolution 2012-A055, which calls for approval of “experimental use” of a text called “Daily Prayer for All Seasons.”<sup>19</sup>

The second response to the 1994 action has been to continue to use the terminology of trial use, while adding restrictions that did not apply to the pre-1979 experience. The introductory essay on use in *Enriching Our Worship I* states, for example, that “supplemental liturgical materials may only be used with the

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<sup>16</sup> General Convention, *Journal of the General Convention of . . . The Episcopal Church, Phoenix, 1991* (New York: General Convention, 1992), 405.

<sup>17</sup> General Convention, *Journal . . . 1991*, 841.

<sup>18</sup> See General Convention, *Journal of the General Convention of . . . The Episcopal Church, Columbus, 2006* (New York: General Convention, 2007), 677-82.

<sup>19</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 172.

permission of the diocesan bishop.”<sup>20</sup> Similarly, the authorizing legislation for the use of the most recent volume of the *Enriching Our Worship* series, *Rachel’s Tears, Hannah’s Hopes*, specifies that is to be used “under the direction of the diocesan bishop or ecclesiastical authority.”<sup>21</sup> The Standing Commission on Liturgy and Music’s proposal regarding *Liturgical Resources I* follows this strategy, for, as suggested above, it imposes two important qualifications on trial use: it is only to be used after Advent 2012 and in accordance with the “direction of a bishop exercising ecclesiastical authority.”

Proposed trial use of *Liturgical Resources I* does, in large measure, conform to other experiences The Episcopal Church has had since 1979—i.e. it is an expansion on the original idea of trial use as discrete preparation for a proposed revisions of the *Book of Common Prayer*. Nevertheless, the third resolve of Proposed 2012-A049 does differ from post-1979 trial use in an important way—it allows bishops to adapt the rite.

The Standing Commission on Liturgy and Music justifies this adaption by appealing to the concept of a “pastoral response.” The General Convention has been using the language of “pastoral response” for the past decade. In 2000, for example, the Committee on Committees and Commissions submitted proposed resolution 2000-D003, which called for the creation of a “Standing Commission for Pastoral Response to Conflict,” which was apparently intended to study any conflict arising in the church and to “work for pastoral understanding among conflicting parties” involved. The resolution failed. The phrase appeared again in the

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<sup>20</sup> *Enriching Our Worship: Supplemental Liturgical Materials Prepared by the Standing Liturgical Commission* (New York: Church Publishing, 1998), 14.

<sup>21</sup> Resolution 2009-A088. See General Convention, *Journal of the General Convention of . . . The Episcopal Church, 2009* (New York: General Convention 2009), 771.

revision to Title IV in proposed resolution 2006-A153. That resolution also failed to pass in the form in which it was presented; the convention adopted a substitute resolution that called for further study. A reworked proposal for the revision of the Title IV canons was introduced in 2009, however, and passed. The canons that were part of that revision used the language of “pastoral response” extensively; the expression showed up 14 times.

The new Title IV canons clarified the expression in both a positive and a negative way. From a positive perspective, a pastoral response was identified as one that embodies “respect, care and concern for affected persons and Communities,” and is “designed so as to promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among all involved or affected” (2009 Canon IV.8[1]). From a negative point of view, it apparently is an action taken “in lieu of disciplinary action” and involves not “advancing proceedings”(2009 Canons IV.2).<sup>22</sup>

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<sup>22</sup> This idea that being pastoral is antithetical to taking judicial action dates back to a trend in post-World II seminary education. As E. Brooks Holifield has explained, “the psychologists and social critics who informed postwar pastoral theology—Erich Fromm, Karen Horney, Carl Rogers, and others—tended to view most social institutions as bureaucratic impositions on human freedom and dignity,” and as a result post-war pastoral theologians no longer “supposed that social institutions, however much in need of periodic reform, both promoted and guided the growth of individuals.” The pastoral response was often to ignore institutional standards and expectations. By the late 1960s, some pastoral theologians attempted to correct this perception by speaking of the role of pastoral judgment and confrontation. They may not, however, have been able to reverse perceptions of the meaning of the word “pastoral.” By the 1990s some authors had abandoned the label “pastoral theology” altogether for the alternative of “practical theology,” a term also had the advantage of suggesting that some besides pastors were practicing the craft. See Holifield, *A History of Pastoral Care in America from Salvation to Self-Realization* (Nashville: Abingdon, 1963), 260, 321. On the use of the term “practical theology,” see Don S. Browning, *A Fundamental*

General Convention's call for a pastoral response to contemporary circumstances would seem, therefore, to be a call to show "respect, care and concern for affected persons," while not worrying unduly about the current canonical definitions and standards. To put it another way, a decision for a pastoral response is a decision to suspend enforcement of the current canons and definitions. The adoption of a pastoral response gives bishops freedom to broker arrangements that meet what they perceive to be the needs of "affected persons."

General Convention resolution 2009-C056 added the qualifier "generous" to the phrase "pastoral response." That 2009 resolution read as follows:

*Resolved,* That the 76th General Convention acknowledge the changing circumstances in the United States and in other nations, as legislation authorizing or forbidding marriage, civil unions or domestic partnerships for gay and lesbian persons is passed in various civil jurisdictions that call forth a renewed pastoral response from this Church, and for an open process for the consideration of theological and liturgical resources for the blessing of same-gender relationships; and be it further

*Resolved,* That the Standing Commission on Liturgy and Music, in consultation with the House of Bishops, collect and develop theological and liturgical resources and report to the 77th General Convention; and be it further

*Resolved,* That the Standing Commission on Liturgy and Music, in consultation with the House of Bishops, devise an open process for the conduct of its work inviting participation from provinces, dioceses, congregations and individuals who are

engaged in such theological work, and inviting theological reflection from throughout the Anglican Communion; and be it further

*Resolved*, That bishops, particularly those in dioceses within civil jurisdictions where same-gender marriage, civil unions or domestic partnerships are legal, may provide *generous pastoral response* to meet the needs of members of this Church; and be it further

*Resolved*, That this Convention honor the theological diversity of this Church in regard to matters of human sexuality; and be it further

*Resolved*, That the members of this Church be encouraged to engage in this effort.<sup>23</sup>

The third resolve of proposed 2012-A049 picks up on the idea of a generous pastoral response. That resolve reads as follows:

*Resolved*, That bishops, particularly those in dioceses within civil jurisdictions where same-gender marriage, civil unions, or domestic partnerships are legal, may provide *generous pastoral response* to meet the needs of members of this Church, including adaptation of the liturgy and declaration of intention contained in "I Will Bless You and You Will Be a Blessing."<sup>24</sup>

In this case a generous pastoral response is linked to the ability to adapt proposed texts while apparently suspending enforcement of any conflicting ordination promises or canons. On the contrary, Bishops are given *carte blanche* to adapt the rite and the declaration of

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<sup>23</sup> General Convention, *Journal . . . 2009*, 780 (emphasis added).

<sup>24</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 168.

intention for those using it. The resolution's suggestion that this adaptation is particularly relevant within "dioceses within civil jurisdictions where same-gender marriage, civil unions, or domestic partnerships are legal" suggests at least one form of adaptation. In its current form neither the rite for same-gender blessing nor the Declaration of Intention refers to "marriage" or to "civil unions." Presumably, it is this language that might be added to the rite, where it the secular law recognizes those categories.

This is the precisely the point that is made in the section of the Standing Commission on Liturgy and Music report titled "The Church's Canon law and Laws of the States." That section of the report envisions a series of possible scenarios. Scenarios A and B are of a "state that authorized same-gender civil marriage." In such a case, the report suggests, a bishop might authorize a priest both to "officiate at the civil marriage and celebrate the proposed liturgy." This section of the report on canons makes it clear, however, that it is the proposed trial liturgy that is to be adapted and not the current marriage service. "Both the rubrics of the *Book of Common Prayer* and Canon I.18," the section explains, "reserve the rite of Holy Matrimony to a man and a woman. This is not subject to the discretion of either a bishop or priest."<sup>25</sup>

While the drafters of proposed resolution 2012-A049 seem to have alterations of the proposed rite to fit the circumstance of states "that authorize same-gender civil marriage" in mind, the resolution itself does not place any explicit limits on the generosity of bishops. This is a departure from earlier trial use.<sup>26</sup>

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<sup>25</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 220.

<sup>26</sup> One could point to the Order for Celebrating the Holy Eucharist, Order for Marriage, and Order for Burial in the *Book of Common Prayer* (1979) for examples of services that currently allow for considerable

### Precedent for the content being proposed

The clearest parallel to the current proposal about same-gender marriage is the extended debate in the church over the possibility of remarriage of a person with a living former spouse. From 1868, when the first canon on marriage was adopted, until 1931, when a revised marriage canon was adopted, the General Convention forbade the remarriage of a divorced person whose former spouse was still living with one exception, which was based on Matthew 5:32: “the innocent party in a divorce for the cause of adultery.”<sup>27</sup> In 1931, however, the General Convention began to change this standard. In that year the convention adopted a revised canon, which took an approach similar to that of the Roman Catholic Church today. The 1931 canon listed a series of impediments on the basis of which a church court might declare that a first marriage was not valid in the eyes of the church and that the persons involved might therefore be free to remarry in the church.<sup>28</sup> Subsequent conventions added to the list of those impediments.<sup>29</sup>

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flexibility in use. These orders were not included in the trial use liturgies that preceded 1979, however, and did not allow improvisation on such basic questions as whether they constituted a marriage service. With Proposed 2012-A049, General Convention would appear to be moving in a new direction with trial use.

<sup>27</sup> Matthew 5:32 (NRSV) reads, “But I say to you that anyone who divorces his wife, except on the ground of unchastity, causes her to commit adultery, and whoever marries a divorced woman commits adultery.” The so called *Matthean exception* allowing remarriage of the innocent party appeared in the first marriage canon in 1868. See White and Dykman, *Annotated Constitution and Canons*, 1:399.

<sup>28</sup> White and Dykman, *Annotated Constitution and Canons*, 1:406-07.

<sup>29</sup> The 1937 convention added “sexual perversion . . . undisclosed to the other” prior to marriage. In 1946—a point in which the material on marriage and remarriage had already been subdivided into two canons—the General Convention added “concurrent contract inconsistent with the contract constituting canonical marriage” and “attendant conditions: error as to the identify of either party, fraud, coercion or duress, or such defects of personality as to make competent



The 1943 General Convention made an interesting decision that might have implications for the current discussion about the status of same-gender relationship. It abandoned the effort to contain the subjects of marriage and remarriage in a single canon and created a new canon titled "Of Regulations Respecting Holy Matrimony and the Impediments Thereto," which dealt with remarriage after divorce.

The separation of canons made it possible for the Church to expand on its teaching about the permanence of marriage in Canon I.17 without the obvious conflict of doing so in the context of a canon that also provided for remarriage after divorce. The General Convention revised Canon I.17 on marriage in both 1946 and 1949. In 1946, the requirement that at least one of the persons married be baptized, the provision that "it shall be within the discretion of any Minister of this Church to decline to solemnize any marriage," and the requirement for clergy instruction in the nature of marriage were added. The convention of 1949 added the requirement that couples to be married sign a declaration that they "hold marriage to be a lifelong union of husband and wife as it is set forth in the Form of Solemnization of Holy Matrimony in the Book of Common Prayer."<sup>30</sup>

The 1949 General Convention provided for a further separation between marriage and remarriage. Because of the long delays and uncertainty involved, most of those seeking at that time to have a remarriage after divorce blessed in the church went first to the court for a secular marriage. *The Book of Common Prayer* (1928) had made no explicit provision for a marriage in such

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or free consent impossible." See White and Dykman, *Annotated Constitution and Canons*, 1:410-12.

<sup>30</sup> White and Dykman note that Canon 41 of 1931 had also included a provision for instruction in marriage. See White and Dykman, *Annotated Constitution and Canons*, 1:411-15.

conditions. The General Convention adopted such a form, but did not seek to include it in the *Book of Common Prayer*; instead it added it to the second edition of the *Book of Offices: Services for Certain Occasions not provided for in the Book of Common Prayer*.<sup>31</sup> The book, approved by General Convention and first published in 1939, served roughly the same function as the current *Book of Occasional Services*. It contained material not found in the *Book of Common Prayer* (1928). By additional a service to the *Book of Offices* and creating a separate canon the General Conventions of the 1946 and 1949 provided for the possibility of blessing some marriages after divorce, while at the same time leaving a prayer book and a canon that characterized marriage as life-long.

That situation remained unchanged until the 1970s, when General Conventions made further alterations. The General Convention of 1973 adopted a sweeping revision of the remarriage canon, making the decision on remarriage more dependent on the health of the relationship into which a couple hoped to enter than on the defects of any previous relationships, thereby making remarriage after divorce more generally available in The Episcopal Church. The 1979 General Convention added the Blessing of a Civil Marriage to the prayer book itself, ending the separation of rites for marriage and blessing into separate volumes.<sup>32</sup> The

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<sup>31</sup> *The Book of Offices: Services for Certain Occasions not provided for in the Book of Common Prayer, Compiled by the Liturgical Commission and commended for use by General Convention, second edition* (New York: the Church Pension Fund, 1949).

<sup>32</sup> In any case, attitudes had changed by the 1970s and a civil marriage followed at a later point by the Blessing of a Civil Marriage was no longer the favored strategy for couples that included a divorced person. Couples were by that point far more willing to live together prior to marriage. See Robert W. Prichard, *Cohabiting Couples and Cold Feet* (New York: Church Publishing, 2008), 12-14 for a discussion on changing patterns of premarital cohabitation.

conventions of the 1970s left the dual canons on marriage and re-marriage in place, however.

#### **Options for action by future General Conventions**

If the decisions of the past four General Conventions are any indication of events to come, then it is extremely likely that the 77<sup>th</sup> General Convention will approve the trial use of a same-gender blessing for which the Standing Commission on Liturgy and Music is asking. This would be a logical progression, given the decisions of the 73<sup>rd</sup> (2000-D039 affirmed that “there are currently couples in the Body of Christ and in this Church . . . living in . . . life-long committed relationships [other than marriage].”), 74<sup>th</sup> (2003-C045 consented “to the ordination and consecration of the Rev. Canon V. Gene Robinson as Bishop Coadjutor of the Diocese of New Hampshire); 75<sup>th</sup> (2006-A167 pledged “to include openly gay and lesbian persons on every committee, commission or task force developed for the specific purpose of discussing issues about sexuality.”), and 76<sup>th</sup> General Conventions (2009-C056 directed that “the Standing Commission on Liturgy and Music, in consultation with the House of Bishops, collect and develop theological and liturgical resources [for the blessing of same gender relationships].”)

Trial use is, however, only an intermediate step in the direction of a more permanent solution. The church might, of course, prolong trial use for an extended period of time, as it has with the *Enriching Our Worship* series. Same-gender blessings, however, involve potential conflicts with the existing *Constitution and Canons* and *Book of Common Prayer* that are not to be found in the *Enriching Our Worship* series. Both the *Canons* and the *Book of Common Prayer* identify marriage as a union of a man and woman. The Introduction to the *Book of Common Prayer's* “Celebration and Blessing of a Marriage,” for example, defines marriage as a “covenant

between a man and a woman,” and the service itself refers to the male and female partners multiple times.<sup>33</sup> Canon I. 18 repeats the identification of marriage as “a physical and spiritual union of a man and a woman” (section 2b) and requires those to be married to sign a declaration that they “hold marriage to be a lifelong union of husband and wife as it is set forth in the Book of Common Prayer” (section 3e).

Canon I.18 also limits marriage to situations in which “both parties have the right to contract a marriage according to the laws of the State” (section 2a). Currently, only 6 states and the District of Columbia would meet this test of legality. In contrast, 38 states have adopted explicit prohibitions against same-gender marriage, in most cases in their constitutions.<sup>34</sup>

The General Convention faces the same options that it did in the 1940s. The convention can either rework the canon on marriage and the service of marriage in the *Book of Common Prayer* to be accommodating of both heterosexual and same-gender marriages, or it can approve a separate canon and a separate rite. As has been indicated above, the General Conventions of the 1940s chose the separate canon and rite approach for remarriage after divorce. Conventions

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<sup>33</sup> The services refers to “the joining together of this man and this woman in Holy Matrimony” (423), “the union of husband and wife” (423), “this man and woman who come to you [God] seeking your grace” (425), “this man and this woman whom you make one flesh” (429), and “the union of man and woman” (430).

<sup>34</sup> Then situation is, however, constantly changing. North Carolina joined the list of states with constitutional provision against same sex-marriage in May 2012. Legislatures in Washington and Maryland have passed legislation approving of same-gender marriage; in both cases the laws will need to pass voter referendums in November 2012 in order to become effective. See the National Conference of State Legislatures, “Defining Marriage: Defense of Marriage Acts and Same-Sex Marriage Laws (Updated June 2012)”, <http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx> (accessed June 26, 2012).

thirty years later did amended that approach by moving the rite for the Blessing of a Civil Marriage into the *Book of Common Prayer*. The separate canon remains, however.

*Reworking existing canons and marriage service.* The reworking of the canons and the *Book of Common Prayer* is the most time consuming of the two options. Article x of Constitution requires approval by two successive meeting of General Convention with the vote in the House of Deputies by orders.<sup>35</sup> General Conventions have, moreover, been resistant to alterations in specific portions of the *Book of Common Prayer*, apart from a more general review of the book's entire contents. The exception to this general rule of opposition to specific changes is the matter of lectionary texts, a specific provision for which has been part of the canons since 1877.<sup>36</sup>

The marriage canons would also have to be thoroughly reworked in order to cover both heterosexual and same-gender marriage. Even clergy living in jurisdictions where same-gender marriage is

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<sup>35</sup> *Constitution and Canons* (2009), article x.

<sup>36</sup> For a recent example of the General Convention's unwillingness to consider revision of one single portion of the *Book of Common Prayer* see 2009-C077 (rejected). The provision for revision of the lectionary in article x does not explicitly cover a circumstance arising from adopting the Revised Common Lection in 2006. The *Book of Common Prayer* includes specific lessons assigned in the texts of Proper Liturgies for Special Days. The Standing Commission on Liturgy and Music has taken the position in proposed resolution 2012-A059 that approval of two successive conventions would be needed in order to change the listing of those lessons, which currently are not in agreement with the lessons found in the Lectionary in the back of the prayer book. See White and Dykman, *Annotated Constitution and Canons*, 1:133; Standing Commission on Liturgy and Music, Report in *Blue Book 2012*, 174-76; and Archives of the Episcopal Church, "Digital Archives: The Acts of Convention," [http://www.episcopalarchives.org/cgi-bin/acts/acts\\_resolution-complete.pl?resolution=2009-C077](http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2009-C077) (accessed June 26, 2012).

legal face potential difficulties in using the language of marriage. The section of the Standing Liturgical Commission's report on law and canons opines that both "*the structure and text* of parts of Canon I.18 [on marriage] may be interpreted as not authorizing a member of the clergy to officiate at a civil marriage where the couple is not eligible for Holy Matrimony, e.g. a civil marriage of a same-gender couple."<sup>37</sup> A revision of Canon I.18 would have to include both the text and the structure of the canon.

*A new canon and rite.* The second option for authorizing blessing of same-gender relationships might be less time-consuming. When the General Convention moves same-gender blessings from trial use to some more permanent status, the least complicated course might be for the convention to follow the example of the 1940s and create a separate new canon that deals with same-gender blessings and a separate approved rite.

The separate canon could deal with the same kind of practical issues covered in the Canon I.18 on marriage. These might include the relationship to the laws of the state and the requirement for free consent, the baptism of at least one party, advanced notice, instruction, the signing of a declaration of intention, and record-keeping. The canon might also cover any requirement for episcopal approval and a provision allowing a clergyperson the discretion to decline to preside.

General Convention would need to decide whether such a new canon would contain provisions for persons previously married or previously joined in a covenant relationship with someone still living, or whether, following the example of heterosexual

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<sup>37</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 220 (emphasis added).

marriage, such provisions might be contained in second new canon.

A clearly drafted canon or canons would probably answer the question raised in the section of the standing committee report on canons and civil law: would a person presiding at a same-gender marriage in a state that allowed such relationships violate Canon I.18 on marriage, which "may be interpreted as not authorizing a member of the clergy to officiate at a civil marriage where the couple is not eligible for Holy Matrimony," which "both the rubrics of the Book of Common Prayer and Canon I.8 reserve to a man and a woman?"<sup>38</sup> If there were a new canon or canons on the blessing of same-gender relationships, the interpretive principle that a specific provision controls a more general one would suggest that the new canon would prevail over any implication based on Canon I.18.<sup>39</sup> If the new canon and rite avoided the language of marriage and Holy Matrimony, as the current proposed trial rite does, the argument that there was no violation of canon I.18 would be even stronger.

As in the case of a potential separate canon, the General Convention might decide on the use of the use of a separate rite as a permanent policy, and not simply a short term strategy for a trial period. If taking this route, the convention might follow the lead of General Convention of 1949 and approve that separate liturgy for inclusion in the *Book of Occasional Service*. That approach would have the advantage of requiring the action of only a single session of General Convention.

The Standing Commission on Liturgy and Music may already be preparing for this eventuality. Proposed

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<sup>38</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 220.

<sup>39</sup> For an explanation of this statutory principle see Jabez Gridley Sutherland, *Statutes and Statutory Construction*, ed. Norman J. Singer, 6<sup>th</sup> edition (West Group, 2000), §51.05.

resolution 2012-A056 calls for the commission “to continue its work on a revision of the Book of Occasional Service and report its progress to the 78<sup>th</sup> General Convention” of 2015. The introduction and accompanying explanation for this 2012 resolution note that although the Standing “Commission reviewed all services in the current Book of Occasional Service and suggested changes, additions, and deletions to guide the work of the subcommittee, . . . this project has been slow to gain traction beyond its preliminary stage.” The Standing Commission called “a full report with recommendations to General Convention in 2015” “a realistic goal,” however.<sup>40</sup> A delay until 2015 may give the Standing Committee time to present a text of the Book of Occasional Services that includes a same-gender blessing.

### Conclusion

The General Convention faces considerable challenges in dealing with the blessing of same-gender unions. The experience of the General convention in the 1940s with remarriage after divorce may, however, provide a useful model best in seeking to navigate those challenges.

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<sup>40</sup> Standing Commission on Liturgy and Music, Report in *Blue Book* (2012), 172-73.