

**ANNOTATED CONSTITUTION
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Episcopal Church
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VOLUME I**

VOLUME I



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Constitution and Canons of the General Convention





CANON 17. Of the Solemnization of Holy Matrimony

Legal and canonical requirements. Sec. 1. Every Minister of this Church shall conform to the laws of the State governing the creation of the civil status of marriage, and also to the laws of this Church governing the solemnization of Holy Matrimony.

Conditions. Sec. 2. No Minister of this Church shall solemnize any marriage unless the following conditions are complied with:

a) Laws of State. (a). He shall have ascertained the right of the parties to contract a marriage according to the laws of the State.

b) Under-standing of nature of Holy Matrimony. (b). He shall have ascertained that both parties understand that Holy Matrimony is a physical and spiritual union of a man and a woman, entered into within the community of faith, by mutual consent of heart, mind, and will, and with intent that it be lifelong.

c) Free consent. (c). He shall have ascertained that both parties freely and knowingly consent to such marriage, without fraud, coercion, mistake as to identity of a partner, or mental reservation.

d) One party at least baptized. (d). He shall have ascertained that at least one of the parties has received Holy Baptism.

e) Instruction. (e). He shall have instructed both parties as to the nature, meaning, and purpose of Holy Matrimony, or have ascertained that they have both received such instruction from persons known by him to be competent and responsible.

Procedures. Sec. 3. No minister of this Church shall solemnize any marriage unless the following procedures are complied with:

*a) Thirty-
days notice.*

(a). The intention of the parties to contract marriage shall have been signified to the Minister at least thirty days before the service of solemnization; *Provided*, that, for weighty cause, the Minister may dispense with this requirement, if one of the parties is a member of his Congregation, or can furnish satisfactory evidence of his responsibility. In case the thirty days' notice is waived, the Minister shall report his action in writing to the Bishop immediately.

b) Witnesses.

(b). There shall be present at least two witnesses to the solemnization of the marriage.

*c) Recorded
in Register.*

(c). The Minister shall record in the proper register the date and place of the marriage, the names of the parties and their parents, the age of the parties, their residences, and their Church status, and the witnesses and the Minister shall sign the record.

*Declaration
of Intention.*

(d). The Minister shall have required that the parties sign the following declaration:

“We, A.B. and C.D., desiring to receive the blessing of Holy Matrimony in the Church, do solemnly declare that we hold marriage to be a lifelong union of husband and wife as it is set forth in the liturgical forms authorized by this Church. We believe it is for the purpose of mutual fellowship, encouragement, and understanding, for the procreation (if it may be) of children, and their physical and spiritual nurture, and for the safeguarding and benefit of society, and we do engage ourselves, so far as in us lies, to make our utmost effort to establish this relationship and to seek God's help thereto.”

*Minister may
decline to
officiate.*

Sec. 4. It shall be within the discretion of any Minister of this Church to decline to solemnize any marriage.



The canon on marriage was numbered Title II, Canon 13, in 1868. It became Canon 38 in 1904, Canons 16 and 17 in 1943, and Title I, Canons 17 and 18 in 1970.

Convention of 1808

The subject of marriage first engaged the attention of the General Convention in 1808, when the House of Deputies, consisting of fourteen clerical and thirteen lay deputies, on the request of the Convention of the Diocese of Maryland, regarding the expediency of adopting the English Canon concerning Marriages, and inserting the same in future editions of the Prayer Book, passed the following resolutions:

Resolved: That the communication from the Convention of the Diocese in Maryland, on the subject of the English Canon concerning Marriages be referred to the House of Bishops, with a request that they will consider the same, if they deem it expedient, during the present or at some future Convention, and will make any communication to this House which they may deem proper.

In reply to this request of the House of Deputies, the House of Bishops, consisting of only two bishops, Bishops White and Claggett, returned the following reply:

The House of Bishops having taken into consideration the message sent to them by the House of Clerical and Lay Deputies, relative to the subject of marriage, as connected with the table of degrees, within which, according to the Canons of the Church of England, marriage cannot be celebrated, observe as follows:

Agreeably to the sentiment entertained by them, in relation to the whole Ecclesiastical system, they consider that table as now obligatory on this Church, and as what will remain so, unless there should hereafter appear cause to alter it, without departing from the Word of God, or endangering the peace and good order of this Church. They are, however, aware, that reasons exist for making an express determination as to the light in which this subject is to be considered. They conceive so highly of the importance of it, and it is connected with so many questions, both sacred and civil, that they doubt the propriety of entering on it, without maturer consideration than any expected length of the present Session will permit; and this opinion derives additional weight, both from there being but few of their house present, and from there being several of the churches not represented in this Convention.

Accordingly, they content themselves with recommending the subject to be considered and acted on at a future Convention.

The same Convention also passed the following joint resolution:

Resolved, That it is the sense of this Church, that it is inconsistent with the law of God, and the Ministers of this Church, therefore, shall not unite in matrimony any person who is divorced, unless it be on account of the other party having been guilty of adultery.

This joint resolution was the only pronouncement of the General Convention on the subject of the solemnization of matrimony until 1868.

Convention of 1868

The first canonical enactment by the General Convention on the subject of the solemnizing of matrimony was enacted by the Convention of 1868 as Canon 13 of Title II, and which read as follows:

No minister of this Church shall solemnize Matrimony in any case where there is a divorced wife or husband of either party still living; but this Canon shall not be held to apply to the innocent party in a divorce for the cause of adultery, or to parties once divorced seeking to be united again.

Convention of 1877

The question of what force the joint resolution of 1808 had, so far as it affected the discipline of the Church, was considered by a special joint committee appointed by the Convention of 1874, which committee was ordered to report its findings to the next Convention.

In its report to the Convention of 1877, this committee declared, among other phases of the force of joint resolutions, as follows (*Journal*, pp. 142-143):

But there is a body of joint resolutions which on their face have the character of a positive act of legislation.

In 1808 it was jointly resolved that it is the sense of this Church, that it is inconsistent with the law of God, and therefore the Ministers of this Church *shall not unite in matrimony* any person who is divorced, unless such divorce have been granted on account of the adultery of the other party. And it was also resolved that the Ministers of this Church ought not to perform the funeral service in the case of any person who shall give or accept a challenge to a duel. In 1856, in the House of Deputies, a resolution was referred, to consider the propriety of preparing a Canon which should effectually accomplish the objects of the resolutions of 1808, above cited.

The Committee on Canons reported adversely on this resolution, and the House refused to accept the proposed Canon....

The resolution of 1808, as to marrying a divorced party, was as imperative in language as the Canon of 1868; yet the House of Bishops treat it as an opinion only, and there is no trace in our Church of its having been treated as a law....

Reviewing the action of this Convention since its organization, in regard to joint resolutions, we find, however,

1. That no penalty has ever been provided in any joint resolution passed by it.
2. That in Canon 2, Title II, which sets forth the offenses for which Ministers may be tried and punished, it is provided that every Minister may be tried and punished for the violation of the Constitution and Canons of the General Convention, but no provision is made for the violation of a joint resolution.
3. That at different times one of the constituent Houses of this Convention has, in direct words, declared a joint resolution to be the mere expression of the opinion of the Convention, and that both Houses appear to have always given that construction to a joint resolution.
4. That this Convention has refused to pass Canons submitted to it on certain subjects, and has passed, immediately thereafter, joint resolutions in almost the same words used in the proposed Canons.
5. That it has passed Canons for the express purpose of putting into the form of law that which had theretofore been merely in the form of joint resolutions.

In view of these precedents, and this long continued and unvarying construction given by the Convention to joint resolutions, this Committee recommend the adoption of the following resolutions:

First, That the joint resolutions heretofore passed by the General Convention have never been deemed to have, and ought not to be construed as having, the force of law, but as being merely the expression of opinion.

Second, That in view of the different doctrine prevailing in the civil courts of our country, and to remove all doubts for the future, an amendment should be made to the Constitution, which will require all future legislation to be by Canon.

Third, That a joint resolution professing to interpret a law is only an opinion, of great weight indeed, but not obligatory.

This report was placed upon the calendar, and not being reached until the last day of the session, its consideration was postponed to the next Convention.

This same Convention, earlier in its session, repealed the Canon of 1868, and enacted the following in its place as Title II, Canon 13.

Of Marriage and Divorce

Sec. 1. If any persons be joined together otherwise than as God's Word doth allow, their marriage is not lawful.

Sec. 2. No Minister, knowingly, after due inquiry, shall solemnize the marriage of any person who has a divorced husband or wife still living, if such husband or wife has been put away for any cause arising after marriage; but this Canon shall not be held to apply to the innocent party in a divorce for the cause of adultery, or to parties once divorced seeking to be united again.

Sec. 3. If any Minister of this Church shall have reasonable cause to doubt whether a person desiring of being admitted to Holy Baptism, or to Confirmation, or to the Holy Communion, has been married otherwise than as the Word of God and discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the Bishop for his godly judgment thereupon; *provided, however*, that no Minister shall, in any case, refuse the Sacraments to a penitent person in imminent danger of death.

Sec. 4. Questions touching the facts of any case arising under Section 2 of this Canon shall be referred to the Bishop of the Diocese or Missionary Jurisdiction in which the same may occur; or if there be no Bishop of such Diocese or Missionary Jurisdiction, then to some Bishop to be designated by the Standing Committee; and the Bishop to whom such questions have been so referred shall thereupon make inquiry in such manner as he shall deem expedient, and then deliver his judgment in the premises.

Sec. 5. This Canon, so far as it affixes penalties, does not apply to cases occurring before it takes effect, according to Canon 4, Title IV.

This canon had been passed by the House of Bishops in the Convention of 1874, but was referred by the House of Deputies to the next Convention.

When the canon came up for consideration in the House of Deputies in the Convention of 1877, it was the subject of an extended debate.

Objections were made to the second section in that its provisions were too stringent. This objection was answered by showing that its provisions were almost identical with those of the Canon of 1868, the only difference being that its provisions were made a little clearer.

Enactment was strongly urged upon the ground that the Canon of 1868 was binding only upon the clergy, while the proposed canon provided for reaching the offending parties, and also provided penalties for the offenders. It was further declared that the Canon of 1868 was a snare to the clergy, and as an illustration thereof, the following case was stated by a deputy, during the debate, as coming under his own observation:

A communicant of the Church formed an adulterous connection and was divorced, and then having completed his villainy, he came to a Clergyman of this Church to be married. The Clergyman, the facts being notorious, absolutely refused to do it. He went to every other Clergyman, sectarian and otherwise, in that village, and they all refused. He then went to an esquire, a member of the law, such as these men are, and the man married him without hesitation. Then he came back to his Clergyman (he was a lawyer himself), with this Canon, (the former Canon), in his hand, and he said to him: "To be sure you could not marry me, but you cannot in any way touch me. I have been legally married by the law of the State, and there is no Canon of your Church by which, having been so married, I can be deposed from the Position of a Communicant of the Church."

Other cases of a similar character were cited, all of which showed the necessity of making some provision to meet such cases, and as a protection to the clergy.

Convention of 1880

The report to the previous Convention concerning joint resolutions was referred to the Committee on Amendments to the Constitution of the House of Deputies, which committee reported, in part, as follows (*Journal*, pp. 114-115):

With the third of these resolutions, namely, that which asserts the non-obligatory character of joint resolutions which profess to interpret law, your Committee find themselves unanimously in accord, but to the doctrine of the other two, they cannot so assent.

After calling attention to the fact that some dioceses had been admitted into union with the Convention by joint resolution, which would, therefore, seem to have the force of law, the committee concluded its report as follows:

Your Committee, therefore, recommend the passage of the following resolutions instead of those appended to the Report above quoted:

1. *Resolved*, That it is inexpedient so to amend the Constitution as to require that all future legislation shall be by Canon.

2. *Resolved*, the House of Bishops concurring, That the Secretaries of the two Houses be instructed to compile and print, for the use of the General Convention, a classified list of all joint resolutions heretofore passed, in order that the Convention may be able intelligently to determine which of them, if any, ought to be inserted in the Digest [as being part of the disciplinary code of the Church].

After the words in brackets at the end of the second resolution had been stricken out, the report was adopted by the House of Deputies.

It is evident from the reports of the two committees of the House of Deputies, that the joint resolution of the Convention of 1808, relative to the remarriage of a divorced person by a minister of this Church, never had the force of law, and as the Committee of 1877 states, “there is no trace in our Church annals of its having been treated as a law.”

Therefore, the canon enacted by the Convention of 1868 may be considered as the first law of the American Church on the remarriage of a divorced person.

Convention of 1883

While the canon enacted by the Convention of 1877 remained without amendment until the revision of the canons by the Convention of 1904, several attempts were made to amend it in the intervening conventions.

The Convention of 1883 appointed a joint committee “to consider the duty of the Church in relation to the whole subject of Marriage, including the impediments to the contract thereof, the manner of its solemnization, and the conditions of its dissolution, and to report to the next General Convention.”

Convention of 1886

The committee made a comprehensive and historically interesting report (*Journal*, p. 783) in which they contrasted the traditional view of the Church with respect to divorce with “the prevailing public sentiment” for “more easy separation.”

A major cause of this, in the opinion of the committee, was the extreme ease with which first marriages could be contracted. In some states, it was pointed out, twelve and fourteen year olds could be married without the consent of a parent or guardian, and even without the presence of witnesses.

The committee proposed a more comprehensive canon, the principal features of which were as follows:

The prohibition of marriages within the degrees of consanguinity and affinity specified in Leviticus 18:6-18.

Ministers not to solemnize the marriage of any person under eighteen years of age, without the written consent of the parent or guardian.

No marriage to be solemnized except in the presence of at least two witnesses, each of whom to be personally acquainted with both parties.

Every minister to keep a register of marriages, in which he was to record certain facts, and this record to be signed by both parties to the marriage, by at least two witnesses, and by the minister.

The law of the Church concerning divorce is that contained in Matthew 5:32 and 19:9, Mark 10:1, and Luke 16:18.

Marriage when duly solemnized not to be dissolved except for adultery or fornication, and the guilty party prohibited from marrying again during the lifetime of the other party.

Any minister violating the provisions of the canon to be subject to trial, and liable to admonition for the first offense, and to suspension or deposition for a repetition of the same.

Persons marrying in violation of the canon, not to be permitted to receive the Holy Communion, except upon penitence and after avowed final separation.

That so stringent a canon did not reflect unanimity on the part of members of the committee may be seen in the following addendum signed by one of its members:

The undersigned finds himself unable to concur in so much of the foregoing report and Canon as forbids the Holy Communion to a truly pious and godly woman, who has been compelled by long years of suffering from a drunken and brutal husband to obtain a divorce, and has regularly married some suitable person according to the established laws of the land.

The proposed canon failed of adoption by nonconcurrence in the House of Deputies, and the matter was referred to the next Convention.

The Conventions of 1889, 1892, 1895, and 1901 all considered the matter, but failed to agree on a new canon.

Convention of 1904

After an exhaustive debate, continuing over four days, by the House of Deputies meeting as a committee of the whole, the house adopted, by a narrow majority, the following Canon 38 in which the House of Bishops concurred:

Of the Solemnization of Matrimony

Sec. 1. Ministers of this Church shall be careful to secure the observance of the law of the State governing the civil contract of marriage in the place where the service shall be performed.

Sec. 2. (i) No Minister shall solemnize a marriage except in the presence of at least two witnesses.

(ii) Every Minister shall without delay formally record in the proper register the name, age and residence of each party. Such record shall be signed by the Minister who solemnizes the marriage, and, if practicable, by the married parties, and by at least two witnesses of the marriage.

Sec. 3. No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has been or is the husband or the wife of any other person then living, from whom he or she has been divorced for any cause arising after marriage. But this Canon shall not be held to apply to the innocent party in a divorce for adultery; *Provided*, that before the application for such remarriage a period of not less than one year shall have elapsed, after the granting of such divorce; and that satisfactory evidence touching the facts in the case, including a copy of the Court's Decree, and Record, if practicable, with proof that the defendant was personally served or appeared in the action, be laid before the Ecclesiastical Authority, and such Ecclesiastical Authority, having taken legal advice thereon, shall have declared in writing that in his judgment the case of the applicant conforms to the requirements of this Canon; and *Provided, further*, that it shall be within the discretion of any Minister to decline to solemnize any marriage.

Sec. 4. If any Minister of this Church shall have reasonable cause to doubt whether a person desirous of being admitted to Holy Baptism, or to Confirmation, or to the Holy Communion, has been married otherwise than as the Word of God and discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the Bishop for his godly judgment thereupon; *Provided, however*, that no Minister, shall in any case refuse these ordinances to a penitent person in imminent danger of death.

Section 3 of the canon, as originally proposed to the Convention, contained no provision whatever for the remarriage of divorced persons. It recognized as the only exception the marriage of a person whose former marriage had been annulled by a civil court for causes existing before the marriage.

The canon as adopted was avowedly a compromise between those who desired that no remarriage of divorced persons, having a husband or wife still living from whom they were divorced, should be permitted by the Church, and those who desired that an exception should be made in the case of the so-called innocent party in a divorce for adultery.

The exception remained, but a waiting period was now imposed, and it was required that satisfactory evidence of the legal divorce action be submitted to the bishop for his consideration.

Convention of 1916

A proposed amendment to drop the exception for cases of adultery was postponed in 1910, and in 1913 was referred to a joint commission on marriage which made an extended report to the Convention of 1916. The report included the following statements:

The refusal of the Church to bless and solemnize a marriage need not be followed by a permanent exclusion from the Sacraments. Consideration must be had of the good faith in which a marriage may have been entered on in ignorance of the Church's law,

and while not subject to the Church's discipline; and of the practical impossibility in many cases, without greater wrong, of the breaking up of a family. In some such cases there must be a power of discretion, very carefully exercised, to admit or readmit persons to the Sacraments. This power must rest with the Minister of the congregation and the Bishop of the Diocese, as the chief minister of discipline.

With this provision the Commission feels justified in recommending an entire refusal to solemnize with the Church's blessing the marriage of any person who has a divorced partner still living. The doubtfulness of the supposed exception in the Gospel according to St. Matthew, the extreme difficulty of determining the innocence of either party to a divorce, and of maintaining the disciplinary safeguards of our existing Canon, and the confusion which these introduce into the Church's law, make it clear in the judgment of the Commission, that the wise course is to refuse the Church's rites of benediction upon any marriage after divorce, during the lifetime of the other party to the original marriage.

(The "Matthean exception" alluded to in the previous paragraph is the phrase "except on the ground of unchastity" in Matthew 5:32, which does not appear in the parallel passages in Mark 10:11 and Luke 16:18, and is thought by many scholars to be an early insertion into the text. Neither Western canon law generally, nor the canons of the Church of England, permitted divorce on this ground.)

The commission proposed amendments to Sections 3 and 4 of the canon to bring them into conformity with its recommendations. In the House of Deputies the proposed amendments were defeated by nonconcurrence of orders, the clergy voting in favor by a considerable majority, the laity voting against it by a small majority.

In 1919 the commission proposed substantially the same amendments, which were again rejected.

Convention of 1922

Section 3 of the canon was amended by adding, at the end of the first sentence, the following words:

nor shall it be lawful for any member of this Church to enter upon a marriage when either of the contracting parties is the husband or the wife of any other person then living, from whom he or she has been divorced for any cause arising after marriage.

Before this amendment was enacted, the canon only forbade a clergyman of this Church from solemnizing the marriage of a divorced person when the husband or the wife of such divorced person was still living; it did not forbid a member of the Church from contracting such a marriage.

Convention of 1925

An amendment of Section 3 was proposed which would have restricted remarriage to cases where the bishop, acting with legal advice, found

on the record that the divorce had been granted for cause arising before marriage. The canon as amended would have provided that where this claim is established by the record, the bishop shall declare in writing that such a divorce, being in effect a decree of annulment is no bar to the marriage of either party. This proposal failed in the House of Deputies.

In the House of Bishops a proposal to amend the canon, so as to allow the marriage of the innocent party in any divorce, with the consent of the ecclesiastical authority, was defeated. Accordingly, at this Convention the Matthean exception prevailed against an attempt to abolish it and one to remove all specific grounds for dispensation.

Convention of 1931

The canon was renumbered Canon 41 and amended to read as follows:

Of the Solemnization of Holy Matrimony

Sec. 1. Ministers of this Church shall within their Cures give instruction both publicly and privately, on the nature of Holy Matrimony, its responsibilities and the mutual love and forbearance which it requires.

Sec. 2. Ministers of this Church shall conform to the laws of the State governing the civil contract of marriage, and also to the laws of this Church governing the solemnization of Holy Matrimony.

Sec. 3. (i) No Minister of this Church shall solemnize any marriage before the following conditions have been carefully complied with:

(a) He shall ascertain by due inquiry the right of the parties according to the laws of this Church to contract a marriage.

(b) He shall instruct the contracting parties as to the nature of Holy Matrimony, its responsibilities, and the means of grace which God has provided through His Church.

(ii) There shall be at least two witnesses present at the solemnization of the marriage.

(iii) Every Minister shall without delay formally record in the proper register the name, age and residence of each party. Such record shall be signed by the Minister who solemnizes the marriage, by the married parties, and by at least two witnesses of the marriage.

(iv) No marriage shall be solemnized by a minister of this Church unless the intention of the contracting parties shall have been signified to the Minister at least three days before the service of solemnization.

Sec. 4. If one party to a marriage so grievously offend the other that the security of permanence of the home is imperilled it shall be the duty of the offended party to lay the matter before a Minister of the Church; and it shall be the duty of such Minister to labor that the parties may be reconciled.

Sec. 5. No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has been or is the husband or the wife of any other person then living, from whom he or she has been divorced for any cause arising after marriage. Nor shall it be lawful for any member of this Church to enter upon a marriage when either of the

contracting parties is the husband or the wife of any other person then living from who he or she has been divorced for any cause arising after marriage. But this Canon shall not be held to apply to the innocent party in a divorce for adultery; *Provided*, that before the application for such remarriage a period of not less than one year shall have elapsed after the granting of such divorce; and that satisfactory evidence touching the facts in the case, including a copy of the Court's Decree, and Record, if practicable, with proof that the defendant was personally served or appeared in the action, be laid before the Ecclesiastical Authority, and such Ecclesiastical Authority, having taken legal advice thereon, shall have declared in writing that in his judgment the case of the applicant conforms to the requirements of this Canon; and *Provided, further*, that it shall be, within the discretion of any Minister to decline to solemnize any marriage.

Sec. 6. (i) Any person whose former marriage has been annulled or dissolved by a civil court may apply to the Bishop or to the Ecclesiastical Court constituted by Canon, of the Diocese or Missionary District of the said person's domicile to have the said marriage declared null and void by reason of any of the following impediments to marriage:

1 Consanguinity (whether of the whole or of the half blood) within the following degrees:

- (a) One may not marry one's ascendant or descendant.
 - (b) One may not marry one's sister.
 - (c) One may not marry the sister or brother of one's ascendant or the descendant of one's brother or sister.
- 2 Lack of free consent of either party.
 - 3 Mistake as to the identity of either party.
 - 4 Mental deficiency of either party sufficient to prevent the exercise of intelligent choice.
 - 5 Insanity of either party.
 - 6 Failure of either party to have reached the age of puberty.
 - 7 Impotence of either party undisclosed to the other.
 - 8 The existence of venereal disease in either party.
 - 9 Facts which would make the proposed marriage bigamous.

(ii) The Bishop in such case, after taking legal advice, or the Ecclesiastical Court proceeding in accordance with the canons and acting through the Bishop, shall render judgment in writing to the petitioner. All judgments rendered under this Canon by the Bishop or the Ecclesiastical Court shall be made matters of permanent record in the archives of the Diocese or Missionary District. No such judgment shall be construed as referring in any way to the legitimacy of children or the civil validity of the former relationship.

(iii) Any person whose former marriage has been annulled or dissolved by a civil court and pronounced null by the Bishop, may be married by a Minister of this Church as if he had never previously been married.

Sec. 7. (i) If any Minister of this Church shall have cause to think that a person desirous of Holy Baptism, or of Confirmation, or of receiving the Holy Communion, has been married otherwise than as the word of God and discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the

Bishop for his godly judgment thereupon. The Bishop, after due inquiry into the circumstances, and taking into consideration the godly discipline both of justice and of mercy, shall give his judgment thereon in writing. *Provided, however,* that no Minister shall in any case refuse these ordinances to a penitent person in imminent danger of death.

(ii) Any persons who have been married by civil authority, or otherwise than as this Church provides may apply to the Bishop or to the Ecclesiastical Court of their domicile for the recognition of communicant status or for the right to apply for Holy Baptism or Confirmation. After due inquiry into all the facts relevant thereto, judgment shall be given in writing to the petitioners by the Bishop or by the Ecclesiastical Court acting through the Bishop. In case of a favorable decision, a Minister of this Church may, at his discretion, bless the parties to the union.

As originally proposed by the Joint Commission on Marriage and Divorce, the canon did not make provision for the Matthean exception. This was added by the Convention.

A new feature of the canon was the extended section on nullity (Section 6), which includes a list of impediments to a valid marriage. The right of determining nullity is here reserved to the bishop or ecclesiastical court, in contrast to the former canon which could have been construed (and apparently sometimes was construed) as leaving the matter to the individual clergyman.

Two alternatives had been proposed by the commission for Section 7. One would have allowed an ecclesiastical court to permit remarriage after a divorce granted for any cause, if it determined, after due inquiry and assessment of the circumstances, that the spiritual welfare of the applicant would be best served thereby. The other provided for the recognition by an ecclesiastical court of a civil marriage contracted by a person whose former marriage had been dissolved by civil authority, which could then be followed by a blessing of the parties to the new union.

Both alternatives were rejected, and Section 4 of the former canon, expanded to include a reference to “the godly discipline of justice and mercy,” was adopted as Section 7.

Convention of 1934

An amendment of Section 3 (iv) was adopted adding after the words “the service of solemnization” the following:

Provided, that for weighty cause a Minister, upon less than the requisite three days’ notice, may solemnize the marriage of persons one of whom is a member of his own congregation or is well known to the Minister, but in such a case the Minister shall immediately report his action to the Ecclesiastical Authority.

Convention of 1937

The joint commission presented a report which began by pointing out that the Church's views on divorce and remarriage were being increasingly ignored by the public. It then addressed the matter of amending the canon in the following words:

Almost everyone agrees that the present Canon is inadequate, but there is a wide difference of opinion as to the course that should be followed.

First, there are those who are always slow to make changes. They see difficulties and dangers and therefore vote to leave things as they are....

Second, there are those who would stiffen the present Canon by omitting the exception in favor of adultery and never allow re-marriage, or the blessing of the marriage of divorced persons by a clergyman of the Church. The objection to this method is that it has failed. Only fifty years ago it was practically the attitude of our whole western civilization. Even where divorce and re-marriage were recognized by law they were looked upon with horror. The English Church and some of its Branches have uncompromisingly held this position—the only so-called Catholic Church to do so....

Third, there are those who would extend the principle of annulment as is done in the Eastern Orthodox Churches and in the Church of Rome. Members of this Convention are generally familiar with the extent to which annulment is used. Marriage is first declared indissoluble and then in many cases pronounced null and void. Of course there are cases where the marriage has never been consummated personally, legally, or religiously; but in many others annulment is declared where

- (a) persons have married themselves
- (b) they have been married by the State
- (c) and they have been married by Priest or Minister with the clear religious intention of one or both parties.

To most Anglicans and Protestants this seems nothing but divorce under another name. In either case it "puts asunder" those whom, to all appearance and understanding "God hath joined together."

In connection with a pamphlet edited by the Rev. Howard Chandler Robbins, which, at the commission's request, had been sent to every member of the Convention, the report stated:

It is repeatedly said that neither an individual Bishop nor the Church itself has the power to take any action contrary to Christ's Teaching. Many leaders in the Church assert without hesitation that the teaching of Christ in this matter is perfectly clear: viz., that the re-marriage of any divorced person constitutes adultery and that such re-marriage sanctions and condones a definite sin.

- (1) The obvious reply is that we should not be discussing this matter at all if Christ had made his mind perfectly clear.
- (2) The pamphlet edited by Dr. Robbins shows that different Churches, the Eastern Orthodox Church, the Roman Church, our own Church and various Protestant Churches, have interpreted His mind in different ways.

(3) The opinion of the leading scholars is contrary to the above views. To quote from Dr. Robbins' pamphlet, "Professor Burton Scott Easton (of the General Theological Seminary) in his commentary on St. Luke takes the ground that Jesus is not laying down a principle of civil law for ordinary society, but stating how the righteous should act." Later Dr. Robbins says "...consequently the directions about divorce in Christ's teachings are as immediately personal as the directions about turning the other cheek. Christ was not discussing what is the best law for a state, or even a Church. He was telling conscientious individuals how to act."

The commission proposed an amendment of Section 5 which would have allowed a bishop to permit the remarriage of the innocent party in a situation where the other party had committed adultery, but where the civil divorce had been granted on other grounds. This was rejected.

It also proposed a new Section 8, granting the bishop authority to permit marriage after a divorce for any cause "if in equity and good conscience, he shall choose to do so," which was likewise rejected.

Two of the commission's proposals were adopted:

Clause (ii) of Section 6 was amended to read:

Lack of free and legal consent of either party.

Clause (vii) of the same section was amended to read:

Impotence or sexual perversion of either party undisclosed to the other.

Convention of 1940

In 1939 the joint commission prepared a report and a complete new canon, substantially the same as its proposal of 1931, which it presented to the House of Bishops and to the Church press, inviting criticism. The canon, amended in the light of criticisms received, was presented to the Convention of 1940.

Adopted with amendments by the House of Bishops, the proposal failed when the House of Deputies refused to concur.

Convention of 1943

Section 7 was transferred to Canon 15, "Of Regulations Respecting the Laity," as Section 3 (a) and (b). Sections 1-3 became Canon 16, "Of the Solemnization of Holy Matrimony." Sections 4-6 became Canon 17, "Of Regulations Respecting Holy Matrimony and the Impediments Thereto."

The joint commission presented an elaborate report, to which were appended two proposed canons, "A" and "B." "A" dealt with the relation between the Church and the family; "B" with the problems arising out of marital failure.

Canon B recognized abnormalities and defects of character which, while not discernible before marriage, are nevertheless as real and insurmountable obstacles to a true marriage as mental incapacity. The report stated:

In essence, Canon B proposes to put into the hands of the diocesan bishops the right to decide when this is the case. They are directed to associate with themselves the pastor, if possible of the petitioner, a lawyer, and a psychiatrist or physician and to investigate the case with a view to determining whether or not a Christian marriage has in fact been established (*Journal*, p. 437).

The Committee on Canons of the House of Deputies presented two substitutes for the joint commission's report.

Of the three proposals, the minority report of the committee on Canons was most favored by the house when it met as a committee of the whole, but in the final vote by orders all amendments were defeated. The minority report, however, was to serve as the basis of the canon recommended by the joint commission in 1946.

Convention of 1946

Canon 16 was renumbered Canon 17 and amended to read as follows:

Of the Solemnization of Holy Matrimony.

Sec. 1. Every Minister of this Church shall conform to the laws of the State governing the creation of the civil status of marriage, and also to the laws of this Church governing the solemnization of Holy Matrimony.

Sec. 2. No Minister of this Church shall solemnize any marriage unless the following conditions are complied with:

(a) He shall have ascertained the right of the parties to contract a marriage according to the laws of the State.

(b) He shall have ascertained the right of the parties to contract a marriage according to the laws of this Church, and not in violation of the following impediments:

(1) Consanguinity (whether of the whole or of the half blood) within the following degrees:

(a) One may not marry one's ascendant or descendant.

(b) One may not marry one's sister.

(c) One may not marry the sister or brother of one's ascendant or the descendant of one's brother or sister.

(2) Mistake as to the identity of either party.

(3) Mental deficiency of either party sufficient to prevent the exercise of intelligent choice.

(4) Insanity of either party.

(5) Failure of either party to have reached the age of puberty.

- (6) Impotence, sexual perversion, or the existence of venereal disease in either party undisclosed to the other.
- (7) Facts which would make the proposed marriage bigamous.
- (8) Concurrent contract inconsistent with the contract constituting canonical marriage.
- (9) Attendant conditions: error as to the identity of either party, fraud, coercion or duress, or such defects of personality as to make competent or free consent impossible.
- (c) He shall have ascertained that at least one of the parties has received Holy Baptism.
- (d) He shall have instructed the parties as to the nature of Holy Matrimony.
- (e) The intention of the parties to contract a marriage shall have been signified to the Minister at least three days before the service of solemnization; *Provided*, that, for weighty cause, the Minister may dispense with this requirement, if one of the parties is a member of his congregation, or can furnish satisfactory evidence of his responsibility. In case the three day's notice is waived, the Minister shall report his action in writing to the Ecclesiastical Authority immediately.
- (f) There shall be present at least two witnesses to the solemnization of the marriage.
- (g) The Minister shall record in the proper register the date and place of the marriage, the names of the parties and their parents, the age of the parties, their residence, and their Church status, and the witnesses and the Minister shall sign the record.

Sec. 3. It shall be within the discretion of any Minister of this Church to decline to solemnize any marriage.

Sec. 4. No minister of this Church shall solemnize any marriage except in accordance with these Canons.

The principal changes were the transfer of the list of impediments to a position where they clearly governed all marriages, and the extension of the right of the minister to decline to officiate to include first marriages as well.

Impediments (8) and (9) were new.

No mention was made of the Matthean exception.

The revision of former Canon 17 is discussed below under Title I, Canon 18.

Convention of 1949

A new Section 3 was inserted into Canon 17, requiring a signed declaration by the parties to the marriage. Except for the later substitution (in 1973) of the words "liturgical forms authorized by this Church" for the words "Form of Solemnization of Holy Matrimony in the Book of Common Prayer," the text of the declaration was the same as in Section 3 (d) of the present canon.

Former Sections 3 and 4 were renumbered 4 and 5.

A new Section 6 was added, reading as follows:

No Minister of this Church shall solemnize the marriage of any person who has been the husband or wife of any other person then living whose marriage has been annulled or dissolved by the civil court, except as hereinafter in these Canons provided; nor shall any member of this Church enter upon a marriage when either of the contracting parties has been the husband or the wife of any other person then living whose marriage has been annulled or dissolved by a civil court, except as hereinafter in these Canons provided.

Convention of 1973

Canon 17, in the form in which it had remained since 1949, was repealed, and the present canon enacted.

See also the discussion of Title I, Canon 18, below.

EXPOSITION OF CANON I.17

Adopted in its present form by the Convention of 1973, this canon prescribes the conditions to be met and the procedures to be followed when a minister of this Church is to solemnize any marriage.

Section 1 requires every minister to conform to the laws of the State governing the civil status of marriage, and also to the laws of this Church governing the solemnization of Holy Matrimony. The language of this section follows closely that adopted in 1931, though the explicit requirement of the observance of the laws of the State appeared earlier in Canon 38 of 1904. Section 1 distinguishes between the State's regulations concerning civil marriage and the Church's laws governing Holy Matrimony, but it should be noted that the canon does not allow a minister to act only in the capacity of a person authorized by the State or other civil jurisdiction to perform a marriage. The minister must also act in accordance with the laws of this Church. Because the language of the present canon makes this clear, Section 4 of 1946, which read "No minister of this Church shall solemnize any marriage except in accordance with these Canons," was omitted in the revision of 1973.

Sections 2 and 3 set forth the conditions and procedures to be met and followed by a minister of this Church in the solemnization of any marriage.

Section 2 (a), the meaning of which needs no comment, was adopted in 1946. Sections 2 (b) and (c) were adopted in 1973, replacing the injunction of earlier canons that the minister ascertain that the proposed marriage was not in violation of any of a list of impediments to the establishment of a Christian marriage. While there is an echo of some of these impediments in Section 2 (c), the chief emphasis in the

two sections has been placed upon a pastoral approach to Holy Matrimony and a clear grasp of its nature as a Christian union. The minister is required to ascertain that the parties proposing marriage understand it to be a physical and spiritual union, entered into within the community of faith by mutual consent of heart, mind, and will, and with intent that it be lifelong. The minister must be satisfied that both parties give free, full, and competent consent to such a union, without fraud, coercion, mistaken identity, or mental reservation.

Section 2 (d) requires that at least one of the parties has received Holy Baptism. When this requirement was enacted in 1946 there was objection to it, chiefly on the part of those who believed that it was implicit in the nature of Holy Matrimony that it be solemnized only for baptized Christians. To introduce legislation requiring only one of the parties to be baptized seemed to weaken this position. On the other hand, it was maintained that marriages were being solemnized where neither party had been baptized, and, furthermore, that the requirement had considerable justification in the ancient experience of the Church. Many clergy, however, acting in accord with the discretion granted them in Section 4, declined to solemnize marriages unless both parties were baptized persons. Thus it became not unusual for an unbaptized party to a proposed marriage to receive instruction and Holy Baptism before the wedding took place. The language of the present Section 2 (b), describing Holy Matrimony as a union “entered into within the community of faith” would appear to imply the desirability of both parties to be baptized members of the Christian community.

Section 2 (e) requires the minister to instruct the parties as to the nature, meaning, and purpose of Holy Matrimony, or ascertain that such instruction has been given them. In its present form this requirement derives from an enactment by the Convention of 1946. It should be noted, however, that fifteen years earlier Canon 41 of 1931 required ministers to “give instruction both publicly and privately, on the nature of Holy Matrimony...”

Section 3 of Canon 17 lists the procedures to be followed when a minister of this Church is to solemnize any marriage. Section 3 (a), requiring at least three days prior notice of the intention to marry be given to the minister, first appeared in Canon 41 of 1931. In 1973 the notice period was lengthened to thirty days. A proviso dispensing with the notice period in certain circumstances was enacted in 1934, and is still operative under the canon.

Section 3 (b) and (c) require the presence of two witnesses to the solemnization, and a registration of the marriage which includes personal

data concerning the parties, and the signatures of the witnesses and the minister. These two requirements derive from a canon enacted by the Convention of 1904, though both had appeared in an earlier form in a proposed canon that failed of adoption in 1886.

Section 3 (d), first inserted into Canon 17 in 1949, requires a declaration (fashioned in part out of portions of Section 2 (b) of Canon 18 of 1946, where a true Christian marriage is briefly defined) to be signed by the parties contracting marriage. The statement contains a simple exposition of Christian marriage as a lifelong union which the contracting parties minister to each other for the purposes described in the declaration, and a solemn engagement on their part to establish this relationship with the help of God. The substance of the declaration provides the minister with an admirable basis for the required instruction.

The concluding Section 4 places it within the discretion of any minister to decline to solemnize any marriage. It derives from Section 3 of Canon 17 as enacted by the Convention of 1946.



CANON 18. Of Regulations Respecting Holy Matrimony: Concerning Preservation of Marriage, Dissolution of Marriage, and Re-marriage

- When marital unity is imperiled.* Sec. 1. When marital unity is imperiled by dissension, it shall be the duty of either or both parties, before contemplating legal action, to lay the matter before a Minister of this Church; and it shall be the duty of such Minister to labor that the parties may be reconciled.
- Application to Bishop for judgement re marital status.* Sec. 2. (a). Any member of this Church whose marriage has been annulled or dissolved by a civil court may apply to the Bishop or Ecclesiastical Authority of the Diocese in which such person is legally or canonically resident for a judgment as to his or her marital status in the eyes of the Church. Such judgment may be a recognition of the nullity, or of the termination of the said marriage; *Provided*, that no such judgment shall be construed as affecting in any way the legitimacy of children or the civil validity of the former relationship.
- Judgment in writing.* (b). Every judgment rendered under this Section shall be in writing and shall be made a matter of permanent record in the Archives of the Diocese.
- Re-marriage of persons whose former union is dissolved.* Sec. 3. No Minister of this Church shall solemnize the marriage of any person who has been the husband or wife of any other person then living nor shall any member of this Church enter into a marriage when either of the contracting parties has been the husband or the wife of any other person then living, except as hereinafter provided:

- Conditions.* (a). The Minister shall have satisfied himself by appropriate evidence that the prior marriage has been annulled or dissolved by a final judgment or decree of a civil court of competent jurisdiction.
- a) Final decree.*
- b) Instruction on responsibility to former spouse and children.* (b). The Minister shall have instructed the parties that continuing concern must be shown for the well-being of the former spouse, and of any children of the prior marriage.
- c) Consultation with and consent of Bishop; report to.* (c). The Minister shall consult with and obtain the consent of the Minister's Bishop prior to, and shall report to that Bishop, the solemnization of any marriage under this Section.
- d) Consent of Bishop of other jurisdiction required.* (d). If the proposed marriage is to be solemnized in a jurisdiction other than the one in which the consent has been given, the consent shall be affirmed by the Bishop of that jurisdiction.
- Sec. 4. All provisions of Canon I.17 shall, in all cases, apply.



This canon was formerly part of the canon immediately preceding.

Convention of 1943

As stated above under Title I, Canon 17, this Convention transferred parts of the canon "Of the Solemnization of Holy Matrimony," as amended in 1931 and 1934, to other canons. Section 7 was made Section 3 of the canon "Of Regulations Respecting the Laity," and Sections 4-6 were made Sections 1-3 of this canon, which was titled "Of Regulations Respecting Holy Matrimony and the Impediments Thereto."

Convention of 1946

The following clause was added to Section 3 of Canon 16, "Of Regulations Respecting the Laity:"

(c) When marital unity is imperilled by dissension, it shall be the duty of either or both parties, before contemplating legal action, to lay the matter before a Minister of this Church; and it shall be the duty of such Minister to labor that the parties may be reconciled.

The title of Canon 18 was changed to read as at present, since the list of impediments had been transferred to Canon 17. The canon itself was amended to read as follows:

Of Regulations Respecting Holy Matrimony.

Sec. 1. The provisions of this Canon shall apply only to an active member of this Church in good standing.

Sec. 2. (a) Any person, being a member of this Church in good standing, whose marriage has been annulled or dissolved by a civil court of competent jurisdiction, and any person, being a member of this Church in good standing, who desires to marry a person whose marriage has been annulled or dissolved by a civil court of competent jurisdiction, may apply to the Bishop or Ecclesiastical Authority of the Diocese or Missionary District in which such person is canonically resident, for a judgment as to his or her marital status in the eyes of the Church, or for permission to be married by a Minister of this Church, provided one year shall have elapsed since the entry of the judgment of said civil court. Such application should be made at least thirty days before the contemplated marriage.

(b) If the Bishop or Ecclesiastical Authority is satisfied that the parties intend a true Christian marriage he may refer the application to his Council of Advisors, or to the Court if such has been established by diocesan action. The Bishop or Ecclesiastical Authority shall take care that his or its judgment is based upon and conforms to the doctrine of this Church, that marriage is a physical, spiritual, and mystical union of a man and woman created by their mutual consent of heart, mind and will thereto, and is a Holy Estate instituted of God and is in intention lifelong; but when any of the facts set forth in Canon 17, Section 2, Clause (b), are shown to exist or to have existed which manifestly establish that no marriage bond as the same is recognized by this Church exists, the same may be declared by proper authority. No such judgment shall be construed as reflecting in any way upon the legitimacy of children or the civil validity of the former relationship.

(c) Every judgment rendered under this Canon shall be in writing and shall be made a matter of permanent record in the Archives of the Diocese or Missionary District.

(d) Any person in whose favor a judgment has been granted under the provisions of this Canon may be married by a Minister of this Church.

It should be noted that no mention is made of the Matthean exception.

Convention of 1949

For the purpose of clarification, Section 2 (a) was amended to read as follows:

Any person, being a member of this Church in good standing, whose marriage has been annulled or dissolved by a civil court of competent jurisdiction may apply to the Bishop or Ecclesiastical Authority of the Diocese or Missionary District in which such person is canonically resident for a judgment as to his or her marital status in the eyes of the Church. And any person, being a member of this Church in good standing, who desires to marry a non-member of this Church whose previous marriage has been dissolved or annulled by a civil court of competent jurisdiction may apply to the Bishop or Ecclesiastical Authority of the Diocese or Missionary District in which he or she is canonically resident, for permission to be married by a Minister of this Church, provided in both cases that the judgment of the civil court has become final and that at least one year shall have elapsed from the date that the decree became final. Such application should be made at least thirty days before a contemplated marriage.

The following words were added to Section 2 (d):

provided, that if the marriage is proposed to be solemnized in another jurisdiction than the one in which said judgment has been granted, the said judgment shall have previously been submitted to and approved by the Ecclesiastical Authority of that jurisdiction.

A number of amendments to Section 2 (b) were offered but none adopted.

At issue was the fact that the words “to exist or to have existed” toward the end of the second sentence of Section 2 (b) were manifestly being interpreted in different ways in different jurisdictions.

Some desired an amendment which would have permitted only one of the interpretations (nullity *ab initio*); others an amendment which would have clearly and unambiguously legitimated both.

A special committee of the House of Bishops, however, saw a clear advantage in the canon as it stood, stating in a report:

Under our present canon no Bishop who holds that only nullity justifies a second marriage need do violence to his conscience; and, on the other hand, a Bishop who holds that causes arising after marriage can dissolve the bond is permitted to give judgment accordingly within the limits of the general causes listed in the previous Canon as impediments (*Journal*, p. 440).

And earlier in the same report:

But as a matter of fact there is no ambiguity here. The Canon recognizes two points of view as legitimate; one, that if one or more impediments existed before the marriage, no marital bond was created; the other, that if one of the impediments arises after marriage, the marital bond is broken (*Journal*, p. 439).

Amendments to the section were also offered at the Convention of 1955 but none were adopted.

Convention of 1958

A majority of the Committee on Canons of the House of Deputies, including Mr. Dykman, the distinguished author of the second edition of this work, offered an amendment of Section 2 (b) which would have recognized only the principle of nullity *ab initio*, stating in their report:

We believe there should be no Canon susceptible of different construction in the several Dioceses and Districts so that marital status may depend on domicile and the position toward permanency of the marriage bond of the Bishops at a particular time.

The minority report quoted the words of Bishop Stephen Bayne in the appendix to the report of the joint commission on Holy Matrimony:

It is, perhaps, unfair to generalize. Yet, it would be agreed by the great majority of the bishops who administer the discipline of the Church, that the present Canons, imperfect as they are, do permit a positive and redemptive approach to the heavy problems of

marriage and divorce in our society; that they do permit approximate justice to be done without corroding our witness to Christian standards; and that, perhaps most important of all, they permit the accumulation of a store of experience which will, in due course, enrich and purify our moral theology in this area. This last is, perhaps, the most important function of any canonical legislation.

The proposed amendment failed.

Convention of 1970

An amendment of Section 2 (a), permitting the shortening of the one year waiting period required before a judgment on marital status, was adopted by the House of Bishops but failed in the House of Deputies because of lack of time to consider it.

Convention of 1973

Before the General Convention began, between thirty and forty memorials calling for amendments to or repeal of the canons on Holy Matrimony were received. Special committees were therefore appointed in both houses. The committees met jointly during the first week of the Convention, came to agreement on the major issues, and drew up proposed amendments to the canons. Proposed Canon 18 admitted the principle that marriages could be declared to be terminated as well as be declared null.

The recommendations of the committees were adopted with no significant changes and by considerable majorities.

Section 7 of Title I, Canon 16, which prior to 1943 had been part of the marriage canon, was repealed. [Clause (c) thereof was identical with Section 1 of the proposed new Canon 18.]

Canon 18 as it had stood since 1949 was repealed, and a new canon adopted, reading as at present except for Section 3 (c) which was as follows:

The Minister shall consult with and obtain the consent of the Bishop prior to, and shall report to the Bishop, the solemnization of any marriage under this Section.

Convention of 1979

For the purpose of clarification Section 3 (c) was amended to read as at present.

EXPOSITION OF CANON I.18

This canon contains regulations concerning the preservation of a marriage threatened with failure; the determination of the marital status of a member of this Church whose marriage has been annulled

or dissolved by civil authority; and the provisions under which a minister of this Church may solemnize the marriage of a person whose former spouse is still living.

When a marriage is imperiled by dissension, Section 1 asserts it to be the duty of either or both parties, before taking any legal action, to seek the counsel of a minister of this Church, and it shall be the duty of such minister to seek to effect reconciliation. This section first entered our canonical jurisprudence among the regulations of Canon 16 of 1946 governing the duties of the laity. Implicit in this requirement is the assumption that ministers shall be adequately prepared to give such pastoral counsel, or to direct the parties to clergy skilled in marriage counselling.

Section 2 (a) in its first sentence allows any member of this Church whose marriage has been annulled or dissolved by a civil court to apply to the bishop or ecclesiastical authority of the diocese of residence for a judgment as to his or her marital status. Such application was provided for in the elaborate provisions of Section 2 (a) of Canon 18 of 1946 as amended by the Convention of 1949. The present Section 2 (a) constitutes a simplification of these earlier provisions by the Convention of 1973.

The second sentence of the present Section 2 (a) was substituted in 1973 for the lengthy Section 2 (b) of 1946. As has already been noted in the outline of the history of this canon, the principle asserted in the legislation of 1946 was that an ecclesiastical judgment of nullity was possible not only when any of the impediments then listed in Canon 17 could be shown “to have existed” at the time of the union, thus preventing the creation of a Christian marriage bond, but also “to exist”—that is, to have arisen after the marriage. The present single sentence substituted in the revision of 1973 not only deletes all reference to the time when the impediment existed or the breakdown of the marriage occurred, but also omits the requirement that a judgment of nullity or termination be given on the basis of the impediments or general causes of failure listed in the earlier canon.

Thus today our canon law permits a favorable judgment as to marital status to be rendered on one of two grounds: (1) *the recognition of the nullity* of an earlier union, the impediments being unspecified, save for the conditions included in Section 2 (c) of Canon I.17, and as well presumably of impediments traditional in the canon law of western Christendom (close degrees of consanguinity, facts that made a union bigamous, etc.); or (2) *the recognition of the termination* of a prior marriage by circumstances that justified divorce.

Any such judgment is an ecclesiastical sentence, and the canon expressly provides that it shall not be construed as affecting the civil validity of a former marriage or the legitimacy of children.

Section 2 (b) requires that a permanent record of every such judgment be placed in the archives of the diocese. It has been pointed out that while civil annulment and divorce records are often sealed to all except the parties and their attorneys, the requirement of Section 2 (b) affords no protection of confidentiality to the ecclesiastical judgments, or to applications and other documents on which such judgments are founded. This would appear the more serious because no evidentiary requirements govern such applications. Unlike a civil proceeding in which spouses are held accountable as litigants in an adversary forum, the ecclesiastical judgment may be based upon no more than a Church member's uncorroborated statement describing the failed marriage, a statement that should remain sealed.

Section 3, enacted in 1973, removed from the jurisprudence of this Church the canonical prohibition of the remarriage of anyone whose first marriage was valid from its inception and whose former spouse was still living. It contains the essential conditions permitting the solemnization of a new marriage by a minister of this Church.

Section 3 (a) requires that the minister be satisfied by appropriate evidence that the prior marriage has been annulled or dissolved by a final civil judgment; (b) provides that the minister shall add to the instruction required by Section 4, that of the responsibility of showing concern for the former spouse and any children of a prior marriage; (c) prescribes the necessity of obtaining the consent of the minister's bishop before the solemnization of a marriage under this section, as well as a report to him of such action afterward; and (d) requires that if the marriage is to be solemnized in a jurisdiction other than that in which episcopal consent has been given, the consent shall be affirmed by the bishop of that jurisdiction.

The final Section 4 orders that the provisions of Canon 1.17 relating to the conditions to be met and the procedures to be followed in the solemnization of Holy Matrimony by a minister of this Church shall, in all cases, apply to solemnization under the provisions of this canon.

ANNOTATED CONSTITUTION AND CANONS

**for the Government of
the Protestant Episcopal Church
in the
United States of America
otherwise known as
The Episcopal Church**

Adopted in General Conventions

1789 1988

BY EDWIN AUGUSTINE WHITE, D.D., D.C.L

**Second Edition, Revised, 1954
BY JACKSON A. DYKMAN, D.C.L.**

1981 EDITION

**Revised and Updated by the Standing Commission on
Constitution and Canons of the General Convention**

**1989 SUPPLEMENT
Prepared by the Standing Commission
on Constitution and Canons**

The Domestic and Foreign Missionary Society New York

*Any baptized person who received the laying on of hands at Confirmation (by any Bishop in apostolic succession) and is received into the Episcopal Church by a Bishop of this Church is to be considered for the purpose of this and all other Canons, as both baptized and confirmed;*⁵¹ and also

Any baptized person who received the laying on of hands by a Bishop of this Church at Confirmation or Reception is to be considered for the purpose of this and all other Canons, as both baptized and confirmed.

Exposition

This amendment was intended to express the various ways that this Church recognizes a person as being confirmed and as is deemed essential to interpret "confirmed" throughout the Constitution and Canons.⁵²

TITLE I, CANON 18 Of Regulations Respecting Holy Matrimony

Section 3 (d)

Convention of 1988

This Section was amended to delete from the Marriage Declaration the language found in the *1928 Book of Common Prayer* and to add the language found in the *1979 Book of Common Prayer*.⁵³

Editor's Note

At this Convention, three resolutions directed towards the amendment of Canons 18 and 19 were introduced. None were adopted but their discussion resulted in referral to the Standing Commission on Health for a study on the canons on Holy Matrimony concerning the need for criteria for a judgment of nullity by the Church and how such a judgment might be effected. These actions demonstrate

51. Blue Book, 1985, p. 162.

52. Journal, 1985, p. 174.

53. Journal, 1988, p. 702.

the appropriateness of a more extensive exposition of the actions of the General Convention of 1983.

The objective and essence of the 1973 marriage canons was set out in the resolution adopted to accelerate their effective date to November 1, 1973 (rather than January 1 of the following years, as would otherwise be the case) unless a Diocesan Bishop designated a later date, but not later than January 1, 1974. The resolution stated: "The Desire of the presently proposed marriage Canons places this Church's concerns for those seeking marriage decisions into a pastoral context."

To that end, as reported to the House of Deputies by the chair of its special committee, who had presided over the joint committee sessions, the new Canon I.18 (now Canon I.19) provided for acceptance of the fact of termination of a marriage by the parties to the relationship by whom it had been made (as contrasted with its solemnization by a member of the clergy). This was demonstrated by the procurement of a civil judgment of annulment or divorce from a civil court of competent jurisdiction. Accordingly, the necessity for an ecclesiastical judgment of nullity based upon the historic canonical impediments as a condition precedent to the solemnization of the remarriage of a person whose former spouse was still living was removed. What was required to be determined by the Bishop or Ecclesiastical Authority was only that the prior marriage had been duly annulled or dissolved by final judgment or decree of a civil court of competent jurisdiction.

The legalism of the previous Canon, under which the invalidity of the prior marriage was measured against the list of canonical impediments and responsibility or fault determined, was replaced by a pastoral attitude under which a ministry to the needs of them parties to the failed marriage would take precedence. The list of canonical impediments was deleted from the Canons.⁵⁴

When an application is made for a judgment as to marital status, there is no canonical requirement in present Canon I.19.2 for an inquiry into the invalidity of a marriage which has been annulled or

54. The historic impediments to marriage would now be merely of guidance to a member of the clergy in determining the right of the parties to contract a marriage according to the laws of the state.

dissolved by a civil court beyond a judgment recognizing that such a civil determination has been made.

The report made to the House of Deputies in 1973 indicated that it was expected that such applications would be infrequent and limited to unique circumstances such as entry into a religious community for which a determination of marital status would be relevant or as to persons for whom a recognition of such status would have psychological and pastoral significance. The language of the second sentence of Section 2 is explicit in bringing within the reach of such an ecclesiastical judgment a termination of a marriage as well as an annulment.

TITLE II WORSHIP

TITLE II, CANON 2 Of Translations of the Bible

Convention of 1988

The New International Version (1978) and *The New Jerusalem Bible* (1987) were added as Bibles acceptable for the reading of the Lessons prescribed by the *Book of Common Prayer*.⁵⁵

TITLE II, CANON 3 Of the Standard Book of Common Prayer

Section 1

Convention of 1985

The words following "Prayer" to the word "accepted" were deleted.⁵⁶

Exposition

The language deleted is no longer applicable as the subject matter is now incorporated in the body of the 1979 *Book of Common Prayer*

55. Journal, 1988, p. 545.

56. Journal, 1985, pp. 600-601.

and is not a series of supplements as found in the previous versions of the Prayer Book.

TITLE III THE MINISTRY

Editor's Note

The 1982 Convention directed the Standing Commission on Constitution and Canons to undertake a comprehensive review of Title III.⁵⁷ This directive led to a joint consultation between that Commission and the Council for the Development of Ministry (CDM). The CDM undertook to completely revise Title III, which revision might possibly include several items of changes in substance that were beyond the canonical authority of the Joint Commission on Constitution and Canons. Thus, CDM was the lead interim body, with Constitution and Canons providing guidance on canonical consistency and clarity.

In addition, efforts were made to eliminate archaic language and outdated references, as well as to use sexually inclusive language.

In its Report to the 1985 Convention, CDM stated:

...[the CDM's] task was to clarify the practical realities already in place and in effect. The following issues were used as a basis for review:

1. Designing the Canons in a more logical order, in view of the Church's understanding of ministry and in light of the *Book of Common Prayer*.
2. Clarifying language, for example not to use "minister" or "ministry" when reference is made to ordained persons alone; identifying order - bishop, priest or deacon - when specific reference is made.
3. Whenever the term "member of the clergy" is used in these Canons, it shall be understood to refer to a person ordained or received as a bishop, priest or deacon as the Canons of this Church prescribe.

57. Journal, 1982, p. C-105.