

Canon Law Council of the Anglican Church of Southern Africa,
Grahamstown, 13-14 January 2014

Anglican Canon Law: Instrument of Unity, Mission and Ecumenism

Mark Hill QC

*Honorary Professor, Centre for Law and Religion, Cardiff University, UK
Extraordinary Professor, University of Pretoria, South Africa*

This paper concerns the juridical infrastructure of Anglicanism worldwide and the recent emergence of *Principles of Canon Law Common to the Churches of the Anglican Communion*.¹ It explores the extent to which these newly recognised principles may serve as a further instrument of unity for the Anglican Communion, help to foster and encourage the mission of component churches of the Communion, and facilitate the ecumenical endeavour in collaboration with other Christian churches.

Introduction

The Anglican Communion is a worldwide fellowship of forty-four churches in communion with the See of Canterbury.² There is no formal body of law applicable to these churches. Each church (or province) is autonomous and has its own legal system. The Communion is understood to be held together by “bonds of affection”, by the shared loyalty of its churches to scripture, creeds, baptism, Eucharist, and the historic episcopate, and by its institutional “instruments of unity” – the Archbishop of Canterbury, Lambeth Conference, Anglican Consultative Council, and Primates’ Meeting. But none of these institutions can make decisions binding on the individual component churches of the Communion.³

The Lambeth Commission on Communion, in its *Windsor Report* (2004), called for an appraisal of these instruments of unity and communion.

¹ I am indebted Professor Norman Doe, Director of the Centre for Law and Religion at Cardiff University for his considerable input into this paper.

² The Anglican Communion Covenant, para 4.1.1; moreover: “The Anglican Communion is a fellowship, within the One, Holy, Catholic and Apostolic Church, of national or regional Churches, in which each recognises in the others the bonds of a common loyalty to Christ expressed through a common faith and order, a shared inheritance in worship, life and mission, and a readiness to live an interdependent life”.

³ *Principles of Canon Law Common to the Churches of the Anglican Communion*, Anglican Communion Network of Legal Advisers (Anglican Communion Office, London, 2008), Principle 11.2: “Each church recognises that the churches of the Anglican Communion are bound together, not juridically by a central legislative, executive, or judicial authority, but by mutual loyalty maintained through the instruments of Anglican unity as an expression of that communion”; see Principle 11.1 for adherence to scripture, creeds, baptism, eucharist, the threefold ministry of bishops, priests and deacons, and common patterns of worship; see Principle 10 for the nature of the Anglican Communion.

The Commission had been established by the Archbishop of Canterbury in 2003 to address “the legal and theological implications” of the decisions of the Episcopal Church (USA) to select a priest in a committed same sex relationship as one of its bishops, and of the Diocese of New Westminster (Canada) as to services of blessing for use in connection with same-sex unions. Its mandate was also to make “practical recommendations for maintaining the highest degree of communion possible in the circumstances resulting from these decisions”.⁴ The Commission recommended three key normative developments designed to maintain the creative tension between provincial autonomy at a local level and ecclesial communion globally: a clarification of the roles of the institutional instruments of unity; the completion of a statement of principles of canon law common to the churches of the Anglican Communion; and the adoption by each church of an Anglican Communion Covenant (and it offered a draft).

Instruments of Unity

Historically, the institutional instruments of the global Anglican Communion (the Archbishop of Canterbury, Lambeth Conference, Anglican Consultative Council, and Primates’ Meeting) developed as mechanisms by which the churches could engage in common counsel in matters of mutual concern; and they were understood to represent a form of dispersed, moral, “complex and still-evolving” authority.⁵ These bodies had all been regarded conventionally as “instruments of unity”, but the Lambeth Commission recommended a change in usage - that the Archbishop of Canterbury be regarded as the “focus of unity” and that the Lambeth Conference, Anglican Consultative Council and Primates’ Meeting be regarded as “the instruments of communion”. The Commission also called for greater clarity about the respective responsibilities of each and “the expectations placed on provinces in responding to [their] decisions”; but it did not favour the accumulation of formal power by the instruments or the establishment of any kind of central curia for the worldwide Anglican Communion.⁶ Indeed, the draft covenant annexed to the Windsor Report required that the instruments of communion set out formally their composition, functions, and relations one with another, and that they should be empowered to resolve contentious issues.⁷ Today, canonically, these institutional instruments of unity and communion enjoy only such binding authority within a church as may be prescribed by the law of that church.⁸ They exist to assist in the discernment, articulation and exercise of the shared faith

⁴ *The Windsor Report* (Anglican Communion Office, 2004) (hereafter TWR), p. 13, Mandate 1 and 2.

⁵ *The Virginia Report*, Chapter 3, page 42. The Anglican Communion Office (in London) acts as the secretariat to the instruments though technically it is the secretariat only to the Anglican Consultative Council: see TWR Appendix One (8).

⁶ TWR, para. 106; see para. 106 as to whether they should be ranked in terms of their respective authorities.

⁷ TWR, Appendix Two: Proposal for the Anglican Covenant, Arts. 23 & 26.

⁸ *Principles*, Principle 11.5; see also 11.4 which classifies the Archbishop of Canterbury as “the focus of unity” and the Lambeth Conference, Anglican Consultative Council and Primates’ Meeting as the “instruments of communion”.

and common life and mission of Anglicans and express this co-operative service in the life of communion.⁹ In short, they enjoy moral authority and not coercive jurisdiction.

The Archbishop of Canterbury (both office and person) is seen classically as “the pivotal instrument and focus of unity” and “relationship to him became a touchstone of what it was to be Anglican”.¹⁰ In turn, the laws of some Communion churches around the world recognise, variously, that the archbishop enjoys “the first place” amongst Anglican metropolitans,¹¹ is owed deference,¹² has a limited jurisdiction exercisable in relation to disputes about doctrine and liturgy,¹³ or the appointment of bishops in the event of failure by an electoral college to elect,¹⁴ or has a wider and more general metropolitan authority.¹⁵ However, the Lambeth Commission proposed that the Archbishop of Canterbury must not be regarded as a figurehead but as “the central focus of both unity and mission within the Communion”. Moreover, the office has a very significant teaching role to articulate the mind of the Communion especially in controversial matters. Accordingly, it recommended the establishment of a Council of Advice to assist in the worldwide ministry of the Archbishop, and that “[t]he Communion should be able to look to the holder of this office to speak directly to any provincial situation on behalf of the Communion when this is deemed advisable” – but that “[s]uch action should not be viewed as outside interference in the exercise of autonomy by any province”.¹⁶ Moreover, the draft covenant appended to the *Windsor Report* provided that, as part of its process in contentious communion matters, the Archbishop of Canterbury “may issue such guidance as he deems fit, or, as appropriate, refer the matter to the Council of Advice for guidance”.¹⁷

The *Windsor Report* stimulated debate about whether the Archbishop of Canterbury should exercise a wider coercive jurisdiction globally in the

⁹ *Covenant*, s. 3.1.4: moreover, “The life of communion includes an ongoing engagement with the diverse expressions of apostolic authority, from synods and episcopal councils to local witness, in a way which continually interprets and articulates the common faith of the Church’s members (consensus fidelium). In addition to the many and varied links which sustain our life together, we acknowledge four particular Instruments at the level of the Anglican Communion”.

¹⁰ TWR, para. 99; see also Lambeth Conference (hereafter LC) 1988, Resolution 18; and C. Podmore, *Aspects of Anglican Identity* (Church House Publishing, London, 2005) 65.

¹¹ Sudan, Const., Art. 4.2; Central Africa, Fundamental declarations, II.

¹² West Indies, Can. 8.

¹³ See N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) Chapters 7 and 8.

¹⁴ Central Africa, Can. 3.

¹⁵ E.g. for the extra-provincial dioceses of Puerto Rico, Const., II.5, the Lusitanian Catholic Apostolic and Evangelical Church, Const., Preamble, 7, see N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) 344-345.

¹⁶ TWR, para. 109; see para. 11 for the suggested Council of Advice.

¹⁷ WDAC, Art. 26.3; the Archbishop would also have been given the duty to “decide all questions of interpretation of this Covenant, consulting the Council of Advice, and seeking the advice of any other body as he deems appropriate” – if approved by the Joint Standing Committee of the Primates’ Meeting and Anglican Consultative Council, the decision of the Archbishop was to be “regarded as authoritative in the Communion until altered in like manner”: Art. 27.1-2.

Communion.¹⁸ However, the Nassau draft covenant (2007), the St Andrew's draft covenant (2008), and the Ridley-Cambridge draft covenant (2009),¹⁹ all dealt with the moral (and not coercive) authority of the office of Archbishop of Canterbury in broadly the same terms as it is treated in the (final) Anglican Communion Covenant, which provides: "We accord the Archbishop of Canterbury, as the bishop of the See of Canterbury with which Anglicans have historically been in communion, a primacy of honour and respect among the college of bishops in the Anglican Communion as first among equals (*primus inter pares*)". Thus, in terms of functions: "As a focus and means of unity, the Archbishop gathers and works with the Lambeth Conference and Primates' Meeting, and presides in the Anglican Consultative Council".²⁰ The high level of generality in the treatment of the functions of the Archbishop of Canterbury in the Covenant is echoed in the *Principles of Canon Law*.²¹

The first Lambeth Conference of 1867 brought together bishops from around the world and it has met since at intervals of roughly ten years.²² Since then Lambeth Conferences have sought to unify the global Anglican family of churches, to develop a consensus in matters of faith and order, to promote ecumenical dialogue, and to stimulate action in the world on moral and political issues: international conflict (1930), racial discrimination (1948), capital punishment (1978), human rights, poverty, debt (1988), HIV/AIDS, the environment, and human sexuality (1998). Issues with a legal dimension have never been very far below the surface: disciplining bishops (1867); missionary jurisdictions (1878); doctrinal dispute (1867-97); liturgical reform (1908, 1948); marriage and divorce (1958); female ordination (1948-88); provincial autonomy and Communion structures (1948-78); ordination and homosexuality (1998); and the structures of the Anglican Communion (2008).

The Lambeth Conference is not a pan-Anglican synod with legislative or judicial powers but an advisory body.²³ The Conference has no formal

¹⁸ See N. Doe, *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (Canterbury Press, 2008) 122, 123, 130, 133, 141, 160, 196; see also E.F. Kuehn, "Instruments of faith and unity in canon law: the Church of Nigeria constitutional revision of 2005", 10 *Ecclesiastical Law Journal* (2008) 161 at 166.

¹⁹ Doe (2008) 130 (Nassau, Art. 5), 141 (St Andrews, Cl. 3.1.4); Ridley-Cambridge, 3.1.4;

²⁰ TACC, 3.1.4.I. The Covenant does not expressly incorporate the recommendations of the Windsor Report about (a) the significant teaching role of the archbishop, (b) the establishment of a Council of Advice (to assist the archbishop), or (c) the recognition of a right in the archbishop to speak directly to controversial provincial affairs.

²¹ *Principles*, Principle 11.4: the Archbishop of Canterbury is (simply) "the focus of unity".

²² For the controversy surrounding its convening, see TWR para. 100; see also Podmore (2005) 36-37.

²³ See also LC 1867, Res. 9: the conference suggested that "a committee [of bishops] be instructed to consider the constitution of a voluntary spiritual tribunal, to which questions of doctrine might be carried by appeal"; this never came to pass. In his letter of invitation, Archbishop Longley stressed that "Such a Meeting would not be competent to make declarations, or lay down definitions on points of doctrine": A.M.G. Stephenson, *The First Lambeth Conference* (SPCK, London, 1967) 188.

constitution as such and attendance is by invitation of the Archbishop of Canterbury.²⁴ Its resolutions are not binding but enjoy a moral authority. However, the Lambeth Commission recommended clarification of the role of the Lambeth Conference in terms of its provision of worldwide leadership and the nature of its authority; moreover: the “provinces of the Communion should not proceed with controversial developments in the face of teaching to the contrary from all the bishops gathered together in Lambeth Conferences”.²⁵ Whilst it did not propose changing the formal status of Conference resolutions, the Commission suggested “that there should be some level of distinction between different kinds of motion at the Conference” – in particular, resolutions which touch upon the definition of Anglicanism or the authentic proclamation of the Gospel should be subject to a distinctive procedure and therefore require the special attention of the Communion.²⁶ The Windsor Report stimulated debate on the role of the Lambeth Conference (and its teaching authority);²⁷ but the terms of the Anglican Communion Covenant assert: “The Lambeth Conference expresses episcopal collegiality worldwide, and brings together the bishops for common worship, counsel, consultation and encouragement in their ministry of guarding the faith and unity of the Communion and equipping the saints for the work of ministry (Eph 4.12) and mission”.²⁸

The Anglican Consultative Council (established in 1967) was the result of a call for greater lay participation and the resolution of the Lambeth Conference 1897 to establish a permanent consultative body as developed subsequently.²⁹ The laws of some churches already enable recourse to the Council (by various means) in disputed matters of faith and order.³⁰ In turn, the *Windsor Report* proposed consideration of whether the Council, given its composition of laity, clergy and bishops, should become “more appropriately the body which can take something approaching binding decisions for the Communion”.³¹ The Anglican Communion Covenant declares that the Anglican Consultative Council is comprised of lay, clerical and episcopal representatives from our Churches. The Council facilitates the co-operative work of the Churches of the Anglican Communion, co-ordinates aspects of international Anglican ecumenical and mission work, calls the Churches into mutual responsibility and interdependence, and advises on developing provincial structures.³² The Covenant does not provide that ACC decisions bind the churches.

²⁴ TWR, para. 110.

²⁵ TWR, Appendix One (3).

²⁶ *Ibid.*, (4).

²⁷ See Doe (2008) 122, 124, 141, 168.

²⁸ TACC, 3.1.4.II.

²⁹ LC 1897, Res. 5; LC 1908, Res. 54; LC 1920, res. 44: the consultative body is “a purely advisory body...and neither possesses nor claims any executive or administrative power”; see also LC 1930, res. 50; LC 1948, Res. 80 and 81; LC 1958, Res. 61.

³⁰ Eg Kenya, Const., Art. II; Sudan, Const., Art. 2; Tanzania, Const., Art. IV; Uganda, Const., Art. II.

³¹ TWR, para. 106.

³² TACC, s. 3.1.4; see also Constitution of the ACC, Arts. 2, 3 and Schedule.

The establishment of the Primates' Meeting was the result of a recommendation of the Lambeth Conference in 1978 to the Archbishop of Canterbury to collaborate with all the primates of the Anglican Communion to consider how "to relate together the international conferences, councils and meetings within the Anglican Communion so that the Anglican Communion may best serve God within the context of one, holy, catholic and apostolic church".³³ The Primates' Meeting continues to act as a consultative and advisory body though there has been much debate as to whether it should exercise "an enhanced responsibility in offering guidance on doctrinal, moral and pastoral matters".³⁴ The laws of some churches enable recourse to the Primates' Meeting in disputed matters of faith and order.³⁵ The Lambeth Commission proposed that the Primates' Meeting should function as "the primary forum for the strengthening of the mutual life of the provinces, and be respected by individual primates and the provinces they lead as an instrument through which new developments may be honestly addressed"; moreover, the Meeting should serve as the Standing Committee of the Lambeth Conference and as such "should monitor developments in furtherance of resolution of the Lambeth Conference in addition to the process of reception".³⁶ The Anglican Communion Covenant declares that the Primates' Meeting is convened by the Archbishop of Canterbury for mutual support, prayer and counsel. The authority that primates bring to the meeting arises from their own positions as the senior bishops of their Provinces, and the fact that they are in conversation with their own Houses of Bishops and located within their own synodical structures. In the Meeting, the Primates and Moderators are called to work as representatives of their Provinces in collaboration with one another in mission and in doctrinal, moral and pastoral matters that have Communion-wide implications.³⁷

The (draft) Anglican Communion Covenant provides that it is the responsibility of each Instrument to consult with, respond to, and support each other Instrument and the Churches of the Communion. Each Instrument may initiate and commend a process of discernment and a direction for the Communion and its Churches.³⁸ In addition to these four institutions with a worldwide ministry, there are networks, commissions

³³ LC 1978, Res. 12.

³⁴ LC 1988, Res. 18.2(a); LC 1998, Res. III.6; see also D.W. Gomez and M.W. Sinclair (eds), *To Mend the Net: Anglican Faith and Order for Renewed Mission* (Carolton TX, Ekklesia Society, 2001).

³⁵ See e.g. South East Asia, Fundamental Declarations, 4.

³⁶ TWR Appendix One (5): the Commission also proposed consideration of the organisation of the Primates' meeting "to facilitate greater participation by the primates and to provide for more formal and businesslike sessions": *ibid.*; for the idea that the Primates' Meeting serve as the Standing Committee of the Lambeth Conference, see LC 1978, Res. 11.

³⁷ TACC, 3.1.4.

³⁸ TACC, 3.1.4.IV.

and other bodies charged with a range of tasks to be carried out at global level.³⁹

Perhaps the institutional aspect which was most neglected in the Windsor process was that of each church itself – it is at provincial level that that juridical activity takes place within the worldwide Communion and it is this activity which evidences the contribution of provincial laws to the promotion and maintenance of global ecclesial communion.

Provincial juridical systems

Each autonomous church in the Anglican Communion has its own legal system. Typically, each church has a constitution, canons and other regulatory instruments including rules, decrees, regulations and liturgical directives. There are also normative instruments in the form of codes of practice, guidance and policy documents (which constitute what might be styled ecclesiastical quasi-legislation or ‘soft law’). These sources exist in the form of the general law of a provincial, national or regional church (applicable to each of its component territorial units) as well as laws at diocesan level. Their function is to order and facilitate common life and communion within each church.⁴⁰ They also contribute to more visible international ecclesial unity in global Anglicanism in terms of the common principles they share. Their study might be categorised as ‘applied ecclesiology’.

The search for a *ius commune*

The Primates’ Meeting of 2001 discussed a paper on the role of canon law in the Anglican Communion: how there is no global canon law in Anglicanism, how provincial laws acknowledge membership of the Communion but deal in the main with domestic provincial matters, and how exploration of these laws reveals fundamental shared principles of Anglican canon law.⁴¹

In consequence, the Primates’ Meeting decided to examine whether there is an unwritten common law (or *ius commune*) shared by the churches of the Communion. In March 2002 an Anglican Communion Legal Advisers Consultation, the first of its type, accepted the hypothesis on the basis of a study of forty-four possible candidate principles prepared in advance for discussion at the event. The following month the Primates’ Meeting discussed a report on the Consultation and concluded: “The Primates recognized that the unwritten law common to the

³⁹ These include e.g. Anglican Health Network, Anglican Peace and Justice Network, Anglican Communion Environmental Network, Network for Interfaith Concerns, Inter-Anglican Standing Commission on Unity, Faith and Order (and its work includes addressing issues related to the institutional instruments of unity communion), Inter-Anglican Standing Commission on Ecumenical Relations and the Inter-Anglican Theological and Doctrinal Commission.

⁴⁰ N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998).

⁴¹ N. Doe, ‘Canon law and communion’, published in 6 *Ecclesiastical Law Journal* (2002) 241; see also N. Doe, ‘The common law of the Anglican Communion’, 7 *Ecclesiastical Law Journal* (2003) 4.

Churches of the Communion and expressed as shared principles of canon law may be understood to constitute a fifth ‘instrument of unity’”.

The Primates’ Meeting recommended the establishment of an Anglican Communion Network of Legal Advisers to produce “a statement of principles of Canon Law common within the Communion”. The Network was set up at a meeting of the Anglican Consultative Council (ACC) in September 2002. In October 2003, an extraordinary Primates’ Meeting urged completion of the work as did the Lambeth Commission in 2004. A drafting group of the Network met in 2005 (at Toronto) and 2006 (at Nassau), and after extensive consultation *The Principles of Canon Law Common to the Churches of the Anglican Communion* was launched at the Lambeth Conference in 2008.⁴² In 2009, the ACC commended the Principles for study in every province, invited the provinces to submit comments on the document, requested a report on these, and encouraged provinces to use the Network as a resource in dealing with legal issues.⁴³

It is now recognised, whether formally as a fifth instrument of unity or communion (or as a matter of evidenced based fact) that there are principles of canon law common to the churches of the Anglican Communion. The category “the principles of canon law” had previously been formally recognised by at least four Anglican churches as well as by other churches.⁴⁴ Moreover, the provincial laws of many churches in the Anglican Communion commonly invoke explicit principles as the foundation for more detailed rules which function to enable communion within those churches. These principles give the more detailed rules shape, coherence, meaning and purpose. Principles of canon law are in the form of general propositions or maxims; they express fundamental ecclesial or theological values, and are often rooted in the canonical tradition inherited by the churches of the Anglican Communion. As such, principles differ from *rules* (particular norms on particular factual situations). They also enjoy a dimension of weight and may indeed be shared with secular legal systems, such as the principle of the rule of law, or concepts of natural justice and procedural fairness.

Secondly, the existence of the principles can be factually established. The principles of canon law are induced from the factual similarities between the actual laws of each church of the Anglican Communion. Their recognition is a scientific task - an exercise in observation and comparison of the legal texts of the provinces of the Communion. These similarities are often generated by churches using a common historical source, such as a Lambeth Conference resolution, rubrics of the Book of

⁴² *Principles of Canon Law Common to the Churches of the Anglican Communion* (Anglican Communion Office, London, 2008).

⁴³ ACC-14, Resolution 14.20 (resolved 5 May 2009).

⁴⁴ West Indies, Const. Art. 6.2(1); Southern Africa, Can. 50; Central Africa, Can. 32.1; Nigeria, Const., Art. XIX.V; see also Roman Catholic Code of Canon Law 1983, c. 9; Eastern Catholic Churches, Code 1990, c.1501.

Common Prayer 1662, or even the Canons Ecclesiastical 1603 for the Church of England.

Thirdly, each church contributes through its own legal system to the principles of canon law common within the Communion. The Anglican *ius commune* represents the collective effect of similarities between provincial legal systems - it is not imposed from above - nor could it be, as no global institutional instrument in the Communion has the jurisdictional competence to legislate for the autonomous churches. That the common principles are immanent in actual legal similarities means that each church is the co-legislator of the *ius commune*. When a church legislates on a particular matter, that church contributes to the store of principles. Moreover, the law of a church may function as a precedent which other churches may employ in their own legislative activity - legal reform in the provinces often involves exploration of how other churches in the Communion approach a particular matter. Whilst churches are autonomous, as a matter of practice they often adopt or adapt provisions from the legal systems of fellow churches; and unilateral legislative adoption from another serves to strengthen the authority of the principle.

Fourthly, the principles have a strong persuasive authority and are fundamental to the self-understanding (ecclesiology) of each church in the Communion. Whilst most principles may derive from similarities between written laws, some are based on unwritten assumptions implicit in written laws, and frequently churches portray a legal principle as having a deeper authority, beyond that of the formal law in which it appears.⁴⁵ Accordingly, the principles have the appearance of laws (they may be prescriptive, prohibitive, or permissive), but they are not themselves laws: they are principles of law.

Fifthly, the principles have a living force, and contain in themselves the possibility of further development. Each church through its own legislative activity may contribute to or subtract from the store of principles, particularly when such developments are replicated around the Communion. For example: churches are increasingly legislating to forbid racial discrimination in church membership and government; churches are developing rules on the admission of the unconfirmed to Holy Communion, particularly children; and many churches today are introducing norms to protect children from abuse. Examples such as these may indicate the evolutionary character of the *ius commune* of the Anglican Communion.

Finally, the existence of the principles both demonstrates unity and promotes unity within the Anglican Communion. The principles might be perceived by some as a threat to the autonomy of the member churches,

⁴⁵ The former Church of India, Pakistan, Burma and Ceylon, Constitution (1930), Declaration 11: 'Of the authority of the principles and customs set out in the preceding Declarations'; the church has received these 'from the Holy Catholic Church of ages past' and 'believes that it was by the guidance of the Holy Spirit that those principles came to be recognised and those customs adopted'.

or as a stimulus for global divisions. However, the principles are themselves a product of the exercise of the autonomy of churches. That they are created locally by the churches also underscores how the churches themselves use their legislative autonomy to shape the juridical unity in global Anglicanism which is present in the similarities exhibited in the articulation of the principles.

Provincial autonomy is unaffected: churches remain free legally to depart from or to add to the principles of canon law. Indeed, that legal systems converge in shared principles of canon law is a concrete expression of the very character of Anglicanism internationally, its commitment to the values presented in them, and, in so far as each church contributes to the principles, the individual responsibility of each church for the shape and maintenance of Anglican identity. Indeed, first principles may be a useful resource for churches seeking to reform their own legal systems not least to test the innovativeness of the reform.⁴⁶

The Legal Advisers Consultation 2002 was not particularly concerned with the methodological question of what test should be employed to determine whether a principle is one common to the churches.⁴⁷ However, *The Principles of Canon Law Common to the Churches of the Anglican Communion* provides that:

“A ‘principle of canon law’ is a foundational proposition or maxim of general applicability which has a strong dimension of weight, is induced from the similarities of the legal systems of churches, derives from the canonical tradition or other practices of the church, expresses a basic theological truth or ethical value, and is about, is implicit in, or underlies canon law”.⁴⁸

There are one hundred principles, arranged under eight Parts - and each of the hundred macro-principles consists of over six hundred micro-principles.

Part I: ‘Order in the Church’ (Principles 1-8)

This deals with the necessity for law in ecclesial society, law as the servant of the church, the conditional nature of church law, the sources, subjects and forms of church law, the rule of law in the church, the requirement of authority, and the effect, application, and interpretation of law. The preamble to Part I emphasises that the laws from which these principles are induced are “never the last word in determining the will of God, though they will often encapsulate the accumulated wisdom and discernment of people living within a certain Christian tradition during the church’s long history”.⁴⁹

⁴⁶ The principles were invoked in a property dispute by the Supreme Court of British Columbia in *Bentley v Anglican Synod of the Diocese of New Westminster* [2009] BCSC 1608.

⁴⁷ *Principles*, p. 101; namely: unanimity; majority; face validity; reversal; common source; canonical tradition; fundamental ecclesial value; theological dimension; perception; consensus.

⁴⁸ *Ibid.*, Definitions, 95.

⁴⁹ *Ibid.*, p. 17.

Part II: 'The Anglican Communion' (Principles 9-14)

This part contains principles relating to the nature of the Communion, the instruments of communion, provincial autonomy, mutual respect, juridical presumptions, and the mutual availability of ministrations. The preamble stresses that: "The strict legal autonomy of each church is seen not as being an end in itself"; rather, it is a means to provide "the greatest possible liberty to order its life and affairs, appropriate to its people in their geographical, cultural and historical context" whilst at the same time "living in interdependence with other Anglican churches who share the same historic identity and calling".⁵⁰

Part III: 'Ecclesiastical Government' (Principles 15-25)

This addresses the juridical unity throughout the Anglican Communion in relation to polity, leadership and authority, administration, delegation, representative government, legislative competence, lay participation in church government, visitations, and judicial process in courts and tribunals.

Part IV: 'Ministry' (Principles 26-46)

This covers the threefold ordained ministry of bishops, priests and deacons; primates, archbishops, admission to the episcopate, the ministry of diocesan and assistant bishops, ordination, authority to minister in a diocese, ministry of priests and deacons, termination of ordained ministry; and the laity, church membership rolls, rights and duties of the faithful, lay ministers and officers and professional and personal relationships in ministry. As the preamble explains, the laws from which these principles are induced are themselves designed to engage, enable, and enlist "human resources in service of their mission to the world, promotion of fellowship of the faithful and witness to the gospel".⁵¹

Part V: 'Doctrine and Liturgy' (Principles 47-59)

This part deals with profession of the faith, the sources and development of doctrine, preaching, teaching and outreach, doctrinal discipline; and public worship and liturgy - making and authorising forms of service, the administration of public worship, and liturgical discipline. Throughout these principles runs "the certainty that in Christ, God's revelation is made known, controlling the Church's faith, commanding the worship of the faithful, and energising the whole body" of the communion of churches so that they may the better "illuminate, challenge and transform cultures, structures, thinking and doing" in the wider world.⁵²

Part VI: 'The Rites of the Church' (Principles 60-79)

These principles address baptism, confirmation, Holy Communion, marriage, confession and burial. The preamble provides: "Perhaps

⁵⁰ Ibid., p. 23.

⁵¹ Ibid., p. 37.

⁵² Ibid., p. 55.

unsurprisingly within a worldwide Communion whose liturgical life was essentially shaped by ... the Book of Common Prayer (1662), there has been widespread agreement over matters of form, including agreement about the principles of liturgical revision in individual churches"; however, "at the same time, historic tensions between the Catholic and Protestant emphases within Anglicanism are never far from the surface".⁵³

Part VII: 'Church Property' (Principles 80-92)

This part contains principles on, amongst other things, ownership and administration, responsible stewardship, places of worship, clergy residences, registers and records, the distribution and control of funds, sources of income, investments, insurance, and clergy stipends and pensions. According to the preamble: "The recurrent theme is the church's interest in ensuring that property be set aside, used and maintained with reverence and integrity to further the mission of the church".⁵⁴

Part VIII: 'Ecumenical Relations' (Principles 93-100)

These principles relate to ecumenical responsibilities, freedom, recognition, agreements, collaboration, admission and reception as well as the admission of non-Anglicans to Holy Communion. The preamble proposes that these juridical principles underline how "[t]he Anglican Communion has never seen itself as a complete and self-sufficient entity, but as an expression of Communion within the One Holy Catholic and Apostolic Church which takes seriously its vocation to reach out beyond its own life to the greater unity of the Church".⁵⁵

The grouping of principles into these Parts is shaped by the systematisation of laws employed by the individual churches of the Communion. The principles are derived from various formal sources. Most are from constitutions and canons, and many from the liturgical norms of service books (which themselves enjoy canonical authority),⁵⁶ and historical sources (the authority of which may be canonically recognised by the churches), such as the Book of Common Prayer 1662,⁵⁷ the canonical tradition,⁵⁸ divine law,⁵⁹ or the practice of the church universal.⁶⁰ Others are rooted in a theological idea expressed in laws,⁶¹ or from guidance issued by ecclesiastical authorities to supplement church law.⁶² Whilst the vast majority derive from similarities between the written laws of churches, some are based on unwritten assumptions, reflecting general propositions implicit in church laws.

⁵³ Ibid., p. 65.

⁵⁴ Ibid., p. 79.

⁵⁵ Ibid., p. 89.

⁵⁶ E.g. Principle 69 on the nature of marriage.

⁵⁷ E.g. Principle 64.6: on baptism and confirmation of mature persons.

⁵⁸ E.g. Principle 25.6: *nemo iudex in sua causa* (an aspect of judicial impartiality).

⁵⁹ E.g. Principle 47.2: the duty to proclaim the Gospel.

⁶⁰ E.g. Principle 60.1: baptism effects incorporation into the church of Christ.

⁶¹ E.g. Principle 53: worship as a fundamental action of the church.

⁶² E.g. Principle 43: the professional ethic of public ministry

The juridical values of clarity, conciseness and consistency govern the form of the principles which themselves are cast in a variety of juridical formulae: most are permissions (“may”), many are precepts (“shall”, “must”), some are prohibitions (“shall not”, “no-one shall”); many are exhortations (“should”: aspirational), and some maxims (“is”).

The Principles of Canon Law Common to the Churches of the Anglican Communion is an organic document, open to development and refinement. It maps out the main legal themes of the Anglican inheritance “when some of the peripheral local detail is stripped away”. Their articulation is “to stimulate reflection on what it is to be a Communion of ordered churches, seeking to live out the Anglican tradition in a world of intensely rapid communication”.⁶³ The document is simply a statement or description of facts derived from the convergences of Anglican legal systems. The *ius commune* is not an instrument of unity in the sense of a “top-down” binding global legal system imposed by a central Anglican authority (none is competent to create such a system). Rather, it is an instrument of unity in the sense of a “grass-roots” development growing from the exercise by each church of its own autonomy through its legal system. The document shows how much Anglicans are united by way of what they share in common, using local provincial laws. The principles also provide an accessible resource for ecumenical partners in developing their own understanding of Anglicanism from a global perspective. The *ius commune*, as a global canonical instrument of unity and communion, enriches rather than undermines traditional Anglican ecclesiology in its historical theological form.⁶⁴

The Anglican Covenant

The *Windsor Report* (2004) proposed, *inter alia*, the adoption by the churches of the Anglican Communion of a covenant,⁶⁵ and the report included a draft.⁶⁶ *Towards an Anglican Covenant*, published in 2006 to take the proposal forward, was endorsed later that year by the Joint Standing Committee of the ACC and Primates’ Meeting. A Covenant Design Group was set up, offered its first draft covenant in 2007 (the Nassau Draft Covenant), and following a provincial consultation in 2007 revised this in its St Andrews draft covenant in 2008.⁶⁷ The latter was discussed at the Lambeth Conference in the summer of 2008. The Covenant Design Group met in September 2008 to consider the reflections of the Lambeth Conference and produced its Ridley-

⁶³ *Principles*, p. 14-15.

⁶⁴ See G.K. Cameron, “A tortoise in a hurry: the ordering of the Anglican Communion”, in 8 IJSCC (2008) 69 at 76.

⁶⁵ The Primates’ Meeting in 2001 considered a paper which was subsequently published as N. Doe, “Canon law and communion”, 6 *Ecclesiastical Law Journal* (2002) 241.

⁶⁶ TWR, Appendix Two: Proposal for the Anglican Covenant, p. 81; see N. Doe, “The Anglican Covenant proposed by the Lambeth Commission”, 17 *Ecclesiastical Law Journal* (2004) 147.

⁶⁷ See N. Doe, *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (Canterbury Press, 2008).

Cambridge draft in 2009,⁶⁸ section 4 of which was revised after discussion by the ACC in May 2009.⁶⁹ Once the Standing Committee of the Anglican Communion agreed the final text in December 2009, the Anglican Communion Covenant was circulated to the churches of the Communion for ratification or rejection in accordance with their own particular formal processes.⁷⁰ The Covenant seeks to reflect the call of Anglicans to be in communion in witness and mission so as to enrich the common life of the Communion; enabling “the Churches to live together in mutual care and affection as one Communion ... to witness ... to the biblical commands of charity and unity”.⁷¹

The Anglican Communion Covenant consists of a Preamble, four Sections and a Declaration. Whilst the covenant is itself an instrument of unity and communion, it also points to other instruments of unity and communion in global Anglicanism. The Preamble sets out the reasons for covenanting: to proclaim the grace of God revealed in the gospel, to respond to the needs of the world, to maintain unity, and to attain the full stature of Christ. The first three Sections, on faith, mission and unity, consist of affirmations followed by commitments arising from those affirmations; it is each church of the Communion that makes the affirmation and the commitment – as with the *Principles of Canon Law*, this approach once more underscores how each of the churches is itself an instrument of communion (and is responsible for its continued maintenance). The first section is entitled “Our Inheritance of Faith”. Each church affirms its communion in the one, holy, catholic and apostolic church, the catholic and apostolic faith revealed in scripture and set out in the catholic creeds and historic formularies of the Church of England (where acknowledged provincially), the Chicago-Lambeth Quadrilateral (on scripture, creeds, sacraments and historic episcopate), shared patterns of worship, and its participation in the mission of the people of God.⁷² The covenantal commitments address a common approach to the contextual application of the shared inherited faith. In living out the inheritance together in their varying contexts, each church commits itself to teach and act in continuity and consonance with scripture and the catholic and apostolic faith, order and tradition, as received by the churches, to faithful, coherent and respectful

⁶⁸ The Framework Procedures for the Resolution of Covenant Disagreements appended to St Andrews Draft was dropped after criticism at the Lambeth Conference that it was as too juridical.

⁶⁹ ACC-14, Resolution 14.11 (8-5-2009).

⁷⁰ The Anglican Communion Office issued ‘The Anglican Communion Covenant: A Study Guide’ (TACC:ASG), and ‘The Anglican Communion Covenant: Questions and Answers’ (TACC:QAA). The covenant has been adopted by Mexico, West Indies, Myanmar and Ireland (as at May 2011).

⁷¹ TACC:QAA, sect. 3; see also sect. 4 on how the covenant will “deepen” Communion life.

⁷² TACC, 1.1; the footnotes to 1.1 refer to the Thirty-Nine Articles of Religion, 1662 Book of Common Prayer, and Ordering of Bishops, Priests and Deacons and Chicago-Lambeth Quadrilateral 1886/1888.

interpretation of scripture, and to nurture and sustain Eucharistic communion.⁷³

The second section on “The Life We Share with Others: Our Anglican Vocation” deals with mission. Mission itself is presented as an instrument of communion insofar as it brings each of the churches together in its promotion – mission is by nature a collaborative process. Each church affirms that communion is not an end in itself but seeks to proclaim and witness to God and that God has been at work in Anglican history in shaping its worldwide mission; each church also confesses its failure to live up to that calling and undertakes to cooperate with other Anglicans in mission and with other Christians ecumenically. In turn, each church commits itself: to share its resources to evangelize, heal and reconcile the broken world; to engage in mission; to be humble and open to conversion; to renew structures for mission; and to root mission in the worship of God (particularly in Eucharistic communion).⁷⁴

The third section, “Our Unity and Common Life”, deals with the exercise of provincial autonomy in the context of ecclesial communion.⁷⁵ Each church affirms its call to live in peace and build up the common life of the Communion, its resolve to live in a communion of churches, its autonomy (its own system of government and law), the absence of a central global authority in Anglicanism, the role of bishops and the threefold ministry, and the importance of the instruments of communion in global Anglicanism (Archbishop of Canterbury, Lambeth Conference, Anglican Consultative Council, and Primates’ Meeting).⁷⁶ Each church commits itself to have regard for the common good of the Communion in the exercise of its autonomy, to support the work of the instruments of communion and to receive their work with a readiness to reflect on their counsels and endeavour to accommodate their recommendations. Moreover, each church must respect the constitutional autonomy of all the churches of the Communion, uphold mutual responsibility and interdependence, seek to discern the will of God through listening, prayer, study and debate, and seek a shared mind (consistent with canon law) in matters of common concern through consultation. Each church must also act with diligence, care and caution in matters which may provoke controversy “which by its intensity, substance or extent threaten the unity of the Communion and the effectiveness of its mission”. In conflicts, a church must participate in mediated conversations and bear in mind that the bonds of affection and love of Christ require maintenance of “the highest degree of communion possible”.⁷⁷

⁷³ TACC, 1.2.1-8; see also TACC:ASG, p. 6: the commitments spell out “a way of” teaching etc.

⁷⁴ TACC, 2.2.1-5; a prominent place is given to the Five Marks of Mission as found in the MISSIO Report 1999 and set out in ACC-6 and 8.

⁷⁵ It builds on the principle of autonomy-in-communion developed, and was substantially modified in the light of suggestions received from the Provinces and the Lambeth Conference.

⁷⁶ TACC, 3.1.1-4.

⁷⁷ TACC, 3.2.1-7.

Section four is entitled “Our Covenanted Life Together”. This sets out the procedures for adopting the covenant and living together by it, and includes rudimentary procedures for conflict-resolution. Each church affirms a set of principles and procedures and, reliant on the Holy Spirit, commits itself to their implementation. By adopting the covenant a church freely offers a commitment to other churches “to live more fully into the ecclesial communion and interdependence which is foundational to the Churches of the Anglican Communion”.⁷⁸ Adoption means that a church recognises that the covenantal statement of faith, mission and interdependence of life is consistent with its own life, but such mutual commitment does not represent submission to any external ecclesiastical jurisdiction.

Every church of the Communion, as recognised under the ACC Constitution (i.e. those churches listed on the schedule of membership of the ACC), is invited to enter the covenant according to its own constitutional procedures. However, if a church does not adopt the Covenant, this does not mean that it is no longer a part of the Anglican Communion; it still retains its Anglican identity.⁷⁹ The Covenant is active for a church when it adopts the Covenant through the procedures contained in its own constitution and canons.⁸⁰

The next set of provisions deals with maintenance of the covenant and resolution of disputes; the covenanted position may be summed up in the maxim: the Communion guides; each church decides, thus protecting provincial autonomy and giving no coercive jurisdiction to the central instruments of communion. Each church has a duty of “fidelity” to the Covenant. The Standing Committee of the Anglican Communion (responsible to the ACC and Primates’ Meeting) must monitor “the functioning of the Covenant in the life of the Anglican Communion on behalf of the Instruments [of Communion]”. When questions arise about “the meaning of the Covenant, or about the compatibility of an action by a covenanting Church with the Covenant, it is the duty of each covenanting Church to seek to live out the commitments [of mutual accountability and interdependence]”. When a shared mind has not been reached, the Standing Committee must make every effort to facilitate agreement. The Covenant does not provide a system of sanctions in the event of breach of covenant by a signatory church. The Committee may request a church to defer a controversial action. If the church declines to do so, the Committee may recommend to any Instrument of Communion “relational consequences” which may specify a provisional limitation of participation in or suspension from that Instrument until completion of a process. The Committee may also (on the advice of the ACC and the Primates’ Meeting) make a declaration that an action or decision is

⁷⁸ TACC, 4.1.1.

⁷⁹ TACC:QAA, sect. 6.

⁸⁰ TACC, 4.1.6. TWR had proposed that each church enacts its own brief communion law authorising its primate (or equivalent) to sign the covenant on behalf of that church and commit the church to adhere to the terms of the covenant.

“incompatible with the Covenant”. On the advice received, the Committee must make recommendations to the churches and Instruments as to relational consequences which flow from such incompatibility – namely, the extent which the decision of the covenanting church in question impairs or limits the communion between that church and other churches of the Communion and the practical consequences of this. Each church or Instrument then determines whether or not to accept the recommendations. Each church must also have its own structures to oversee the maintenance of the Covenant in the life of that church and to relate to the Instruments of Communion on matters pertinent to the Covenant.⁸¹ Finally, any covenanting church may decide to withdraw from the Covenant, and the Covenant may be amended with the consent of three quarters of the covenanting churches.⁸² That the Covenant is an instrument which binds a church is in line with the canonical principle *pacta sunt servanda*: agreements must be kept.⁸³

The Anglican Covenant project should not be seen in isolation. It may usefully be measured against covenant models in scripture, sacramental theology, ecumenism, and comparable global ecclesial communities. Covenantal theology (particularly in Protestant tradition) maintains that scriptural covenants may legitimately function as models for ecclesiastical polity. In the sacramental covenants of baptism, marriage and ordination, the parties are called to covenant, exchange promises, undertake commitments, and limit their autonomy by the duty to have regard for others. These sacramental covenants are entered solemnly, bind the parties and are regulated by canon law, with consequences for non-compliance. In addition, ecumenical covenants and other agreements are today normal vehicles by which Anglican churches enter and regulate their relationships of communion or inter-communion with other churches. They are voluntarily entered, involve affirmations of common identity, and prescribe commitments through pledges and other solemn undertakings. Parallels may also be drawn with historical and contemporary covenants entered between Anglicans and comparable international ecclesial communities in the Orthodox, Lutheran, Methodist, and Reformed traditions.

Practical canon law

The term canon law denotes the rules and regulations which govern the operation of any faith community. It is perhaps most readily associated with Roman Catholicism where the *Code of Canon Law* (substantially revised in 1983) is a highly detailed all-embracing legal system of universal application throughout the western Catholic Church. In the Church of England the canons are but one composite part of the corpus of law which governs the church. The term ‘ecclesiastical law’ is perhaps preferable for the entire body of regulatory instruments. In the Dutch

⁸¹ TACC, 4.2.9; for the original idea, see WDAC, Art. 25: the Anglican Communion officer.

⁸² TACC, 4.4.2.

⁸³ See N. Doe, *An Anglican Covenant*, Ch. 9.

Reformed tradition, Church Polity or Church Order is the preferred expression. The concept however, common to all faith communities, is a body of rules which regulate the functioning of the organisation.

The purpose of the law of and for the Church of England is much the same today as it was in the days of the early Church. It is to regulate the functioning of the Church and the conduct of its component members by a combination of commands, prohibitions and permissions. Superficially, the law is concerned only with order and discipline, but a closer analysis reveals that it touches upon spiritual, theological, pastoral and evangelistic concerns at the heart of the Christian faith.⁸⁴ As the Catholic canonist, Orsy remarked: 'Canon law springs from the will of Christ but its minute and detailed rules come from human agents'.⁸⁵

Since the Church of England remains the established Church in England, the inextricable link between Church and State permits the State to legislate for the Church and its religious affairs by Acts of Parliament. The General Synod of the Church of England has the power to legislate by Measures,⁸⁶ have the full force and effect of an Act of Parliament.⁸⁷ The power to legislate by Canon now also vests in the General Synod.⁸⁸ Various types of secondary or subordinate legislation have an impact on the operation of the Church of England, largely Statutory Instruments constitution procedural rules. There is a substantial body of ecclesiastical and secular common law which has been built up by judicial decisions over centuries. Quasi-legislation is a burgeoning source of governance and regulation in the Church of England: policy documents, regulations, directions, codes of practice, circulars, guidance and guidelines. Some are issued nationally, some at the provincial level and others by individual dioceses. Custom and usage are often the best indicators of the law.

The law ought not to be seen as a negative and oppressive 'legalistic' instrument. Contrary to the perception that law is an alien concept in the relationship between God and man, Ombres indicates that law, as applied ecclesiology, contributes to sustaining and expressing the freedom of the children of God. The life of the Church is structured in its institutions and organisations as is thought pastorally appropriate in her sacramental making present of Christ's life, death and resurrection.⁸⁹ The law in many

⁸⁴ For recent examples, see the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, s1, which gives statutory articulation to the role of the parish church 'as a local centre of worship and mission'; and the Clergy Discipline Measure 2003, s 1, which declares that 'any body or person on whom functions in connection with the discipline of persons in Holy Orders are conferred by this Measure shall, in exercising those functions, have due regard to the role in that connection of the bishop or archbishop who, by virtue of his office and consecration, is required to administer discipline'.

⁸⁵ *****

⁸⁶ Synodical Government Measure 1969, s 2(1), Sch 2, art 6(a)(i).

⁸⁷ Church of England Assembly (Powers) Act 1919, s 4.

⁸⁸ Synodical Government Measure 1969, s 1(1), (3), (5); Sch 1, para 1; Sch 2, art 6(a)(ii).

⁸⁹ R Ombres, 'Why then the law?' [1974] *New Blackfriars* 296. Attempts at an Anglican articulation of the interface between canon law and theology are to be found in N Doe,

instances provides the liturgical framework within which an expression of faith may take place. Coriden asserts that 'the canons also help to create and maintain the metaphors and symbols which influence the faithful subtly but strongly'.⁹⁰

The integrity of any Church, or indeed any secular institution, depends upon certain beliefs and behaviour being common to all its members. Proper internal governance reflects the church's self-understanding. Further, it was Christ himself who, when commissioning his apostles, told them to make provision for what was acceptable and what was not,⁹¹ thus began a process of law-making for the Christian Church.⁹²

Ecumenism

The ecumenical movement seeks to achieve Christian unity through greater visible communion between the separated (or divided) institutional churches of Christianity worldwide. The practice of ecumenism and ecumenical theology has developed principally at the doctrinal and theological levels. The juridical instruments of churches have not thus far played a central role in ecumenical discourse, although they are occasionally seen as the 'missing link' in ecumenism, particularly as between Anglican and Roman Catholic canonists.

Juridical instruments define what ecclesial degree of communion is possible or not, either enabling or restricting the development of greater visible communion between separated churches in the quest for Christian unity. As such, this 'juridical ecumenism' offers both a theoretical and a practical framework for the transformation of ecumenism to complement but not replace the current dominance of the doctrinal and theological focus in contemporary ecumenical method and practice.

The World Council of Churches acknowledged in 1974 the potential of the study of 'church law' as an instrument of ecumenism, but this has been neglected.⁹³ In Christian teaching about the nature of the church (ecclesiology), there is one undivided church – the church universal, the Body of Christ – the one, holy, catholic and apostolic church of the Nicene Creed.⁹⁴ This teaching is not only expressed in the doctrinal documents of the various separated churches themselves but also

'Towards a Critique of the Role of Theology in English Ecclesiastical and Canon Law' (1992) 2 Ecc LJ 328; and M Hill, 'Gospel and Order' (1997) 4 Ecc LJ 659.

⁹⁰ Coriden, *An Introduction to Canon Law* 6: 'For example', he says, 'the canons call marriage a covenant rather than a contract, and a parish is described as a community of the faithful rather than a territorial part of a diocese. The effects of these characterisations, over time, are profound'. See also E Corecco, *The Theology of Canon Law: A Methodological Question* (Pittsburgh, 1992).

⁹¹ See Matt 16:19; 18:18; 19:28; Luke 22:28-30; 10:16.

⁹² See by way of example, the rules relating to the conduct of worship prescribed by St Paul in his first epistle to the Corinthians, particularly chs 11 and 14. Note also the synod of Jerusalem (AD 48) referred to in Acts 15.

⁹³ World Council of Churches, Faith and Order Commission, Document IV.8 (1974).

⁹⁴ See typically A.V. Dulles, *Models of the Church* (second edn., Dublin, 1988).

appears in a great many ecumenical statements resulting from dialogue between these churches. The juridical instruments of churches bind them to this understanding of the existence and unity of the church universal.

It is a principle of Christian law and order that there is unity in the church universal: one, holy, catholic and apostolic church.⁹⁵ This juridical principle is merely a reflection of the doctrinal positions of churches. The juridical instruments of the separated churches share much in common in terms of their recognition of the reasons for Christian unity (as a divine imperative), their definition of ecumenism (including the nature of ecumenical communion), their obligation to participate in it (the ecumenical obligation), and their protection of the marks of the church universal. According to the *Principles of Canon Law*, '[a] church should promote mutual understanding, foster reciprocal fellowship, seek ecumenical cooperation, and strive for visible unity amongst the separated churches'.⁹⁶

Juridical instruments provide that ecumenism involves open and frank dialogue, consultation and cooperation, common witness (including joint action for social justice), reciprocity (in ministry, worship and sacrament), perhaps through intercommunion, and ultimately full communion. The tone is self-critical and open to an understanding of the other's position. However, ecclesial norms impose restraints on the discharge of the ecumenical obligation. For example, there must be mutual respect of each other church's discipline and a forbearance from proselytism.⁹⁷ Anglican churches may allow reciprocal acts of intercommunion or full communion if there is agreement on apostolic faith and order and then only 'to the extent permitted by the discipline of each church involved'.⁹⁸ The juridical instruments of churches provide a range of mechanisms designed to symbolise or protect a church's loyalty to the church universal, such as loyalty to scripture as the ultimate standard in matters of faith and order, and the headship of Christ.

In sum, the juridical instruments studied reveal principles of Christian law and order that the restoration of Christian unity is a divine imperative, that each church has a duty to promote the ecumenical movement through dialogue and cooperation moving ultimately towards full ecclesial communion, that ecumenical activity must be lawful and prudent, and that each church should protect in its juridical system the marks of the church universal. Sometimes juridical instruments provide for the ecumenical formation of both clergy and laity, or at least an exhortation to collaborate in the ecumenical endeavour.

The juridical instruments of each church studied contain a range of conditions which must be satisfied before another denomination is

⁹⁵ N Doe, *Christian Law* (Oxford, 2013).

⁹⁶ Principles, 93.3; Korea: Const., Fundamental Declaration of Faith and Rites; Lusitania: Can. X.

⁹⁷ ED 1993, 6, 20, 23, 106; 107.

⁹⁸ Principles, 98.1.

recognised as a church for the purposes of the development of greater visible communion. They commonly recognise that baptism generates a spiritual communion between all Christians regardless of tradition.⁹⁹ Many provide for: the recognition of a baptism administered in another church. The mutual recognition and inter-changeability of ministries is a further aspect, as is Eucharistic fellowship and provision for 'mixed' marriages, between a baptised person within the tradition and one in a church outside the tradition) as an exception to the general rule; however the conditions vary. Common prayer and worship (outside the Eucharist) are much less sensitive issues and the juridical instruments of the different traditions are generally liberal with regard to them. Cooperation in humanitarian work and social mission also features.

Conclusion

If I were to sum up this lengthy and technical paper in a simple phrase, it would be to say that law is the servant of the church, not its master. It is more than a necessary evil. It regulates the lives of the faithful, just as the rules of a sports club dictate how members should behave: what is expected of them and what they can expect in return. It is a means of self-understanding, articulating how a community of faith sees itself in terms of the interdependence of its members and the engagement of the institutional church with the world. Exhortations to Godly behaviour are underscored by discipline for transgressions. Those who hold office have their duties prescribed, and a mechanism of enforcement clearly set out. Comparisons of legal systems reveal similarities as well as exposing differences, which can then be explored in respectful dialogue. Once we understand law not as the restraining hand of unyielding authority but as a facilitative medium to foster unity and promote mission and evangelism, we can see it as a powerful force for good for worshipping communities and for the wider world. This concept should be nurtured and promoted as a concrete means of expressing self-understanding in ecclesiology, doctrine and mission. Properly construed, law can be a strong force in the furtherance of the Gospel: 'the letter killeth but the spirit giveth life'.

⁹⁹ On the basis that baptism, theologically and juridically, is incorporation into the church universal.