The 2022 Revision of *The Principles of Canon Law Common to the Churches of the Anglican Communion*

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At the 2008 Lambeth Conference, *The Principles of Canon Law Common to the Churches of the Anglican Communion* were launched.[1] For the first time, detailed principles of Anglican canon law were made manifest, the fruit of earlier research by the legal academic Norman Doe.[2] As early as 2002, the Primates of the Communion had recognised that 'the unwritten law common to the Churches of the Communion and expressed as shared principles of canon law may be understood to constitute a fifth "instrument of unity"'.[3] The *Principles* project proved to be a wellspring of legal scholarship and ecumenical activity both before and after the 2008 publication.[4]

These *Principles* are not laws. They are descriptive, whereas the laws from which they derive are prescriptive. The authority of the *Principles* comes solely from the fact that they reflect the legislative activity of over 40 autonomous churches in the Anglican Communion. However, this means as the laws change the *Principles* may need to be revised to reflect the new legal reality. A Principle which previously reflected the legal position common to the churches of the Communion may need amendment, deletion or supplementation when one or more of the churches legislate in that area.

For this reason, it had long been hoped that a revised edition of the *Principles* could be prepared in time for what became the Lambeth Conference 2022. The COVID-19 pandemic meant that physical meeting of international committees could not take place. Instead, the revision of the *Principles* made use of video

1 Anglican Communion Legal Advisers' Network, *The Principles of Canon Law Common to the Churches of the Anglican Communion* (London, 2008).
2 N Doe, *Canon Law in the Anglican Communion: A Worldwide Perspective* (Oxford, 1998).
3 'Report of the Meeting of Primates of the Anglican Communion 10–17 April 2002', available at <https://www.anglicannews.org/news/2002/04/report-of-the-meeting-of-primates-of-the-anglican-communion.aspx>, accessed 7 August 2022.
4 For a fuller account of the history of the *Principles* 1999–2021, see the Preface of the *Principles* (2022) and the Ecclesiastical Law Society resources webpage <https://ecclawsoc.org.uk/principles-resources/>, accessed 8 August 2022.

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conferencing technology, and so was able to involve a much greater number of participants than could have happened in any physical meeting.

The revision project was overseen jointly by the Ecclesiastical Law Society and the Centre for Law and Religion at Cardiff University Law School. In the first phase, the ELS organised ten reading groups meeting during 2021. These groups studied the *Principles* together in light of the laws of their churches. In doing so they were responding to the Anglican Consultative Council's call for study of the *Principles* 'in every province'.[5] In particular, however, they were producing output that would be used in the second phase of the revision project. Where the law of a church was found not to be well-expressed by a Principle, or contrary to it, the legal evidence for this was recorded.

By the autumn of 2021, therefore, there was a large quantity of output arising from the reading groups. This output was the raw material for the second phase of the project, resourced by the Cardiff Centre for Law and Religion. A revision committee was formed, drawn from canon lawyers across the Communion. I was asked to chair the committee, which met together using the Zoom platform.[6] Professor Norman Doe, Director of the CLR, collated the reading groups' output in the form of draft revisions and explanations for these, and the revision committee worked through the groups' findings and these drafts. The legal evidence was assessed, and, where appropriate, changes to the *Principles* were agreed.

Early in 2022, a draft of the revised *Principles*, was circulated as widely as possible to principal canon lawyers in the churches of the Communion, using the Anglican Consultative Council's legal contact database. Valuable feedback was received, resulting in further revision to the draft.

As copyright-holders of the *Principles*, the Anglican Consultative Council took charge of the publication process. Thanks to the sponsorship of the ELS, a professional index was produced for this edition. The Archbishop of Canterbury, the Most Rev'd Justin Welby, wrote a foreword in which he described the *Principles* project as 'absolutely essential'. The Rev'd Dr Will Adam, Darren Oliver and I contributed a preface outlining the uses to which the *Principles* have been put since their first publication, in academia, in judgments of ecclesiastical and secular courts, in the development of Anglican

5 ACC Resolution 14.20b, 5 May 2009.

6 The membership of the committee was as follows: the Rev'd Dr Will Adam, Deputy Secretary General of the Anglican Communion; Dr Renae Barker, Senior Lecturer, University of Western Australia, Diocesan Advocate of Bunbury; Dr the Hon Moses Cheng, Chancellor of the Hong Kong Sheng Kung Hui; the Rev'd Russell Dewhurst (chair), Fellow and doctoral student, Cardiff Centre for Law and Religion; Professor Norman Doe, Director, Cardiff Centre for Law and Religion, Chancellor of Bangor; the Worshipful Professor Mark Hill KC, Cardiff Centre for Law and Religion, Chancellor of Chichester, Leeds and Gibraltar in Europe; the Rt Rev'd Dr Vicentia Kgabe, Bishop of Lesotho; Mary Kostel, Chancellor to the Presiding Bishop of The Episcopal Church; Justice Rubie Nottage, Former Provincial Chancellor, Church in The Province of the West Indies; Darren Oliver, Legal Adviser to the Anglican Consultative Council, Provincial Registrar of Canterbury; the Ven Alan Perry, General Secretary of the Anglican Church of Canada.

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canon law and in ecumenism. The Bishop of Lesotho, The Rt Rev'd Vicentia Kgabe, wrote a concluding reflection and also hosted the official launch event at the Lambeth Conference on 5 August 2022.

The Principles of Canon Law Common to the Churches of the Anglican Communion[7] is now available for PDF download on the ELS and ACC websites, and hard copies can be ordered through Amazon.

Comment on the revision process

The 100 *Principles* are composed of over 600 'micro-principles'. It is remarkable that fewer than 90 of these micro-principles needed revision, despite the fact that over 100 canon lawyers subjected all 600 to close scrutiny. This shows that the *Principles* generally are robust and able to stand up to intense study. Furthermore, many of the revisions were very minor rewordings. For example, Principle 65.5, 'Confirmation should be administered at a celebration of the Eucharist', was revised by changing the word 'should' to 'may'. This change was made because three reports to the committee indicated that the original wording was now considered to be unsupported by the laws and liturgical texts of the churches they had studied.[8] It should be noted that in agreeing amendments such as this, the revision committee was seeking neither to make any kind of theological evaluation nor to prescribe what canon law should be. The project is concerned solely with formulating principles that accurately state the commonalities found in the legal evidence.

It is worth reflecting briefly on silence in the *Principles*. The absence of any principle adverting to a particular subject should not be understood as an implication that that subject is unimportant. It may simply be that no common principle of law can be discerned. For example, it is impossible to understand the legal structure of the Church of England without considering the nature of establishment. However, the overwhelming majority of Anglican churches are not established, indicating *prima facie* no common principles in this area. Another example is the three tikanga or cultural streams of the Anglican Church in Aotearoa, New Zealand and Polynesia: integral to that church's constitution, but not common to other churches in the Communion. Therefore no common principle is formulated.

In 2008, Principle 38.5 stated:

7 Anglican Consultative Council, *The Principles of Canon Law Common to the Churches of the Anglican Communion*, 2nd edition (London, 2022).

8 These responses referred to the law in the Church of England (suggesting that 'should' was only weakly supported in *Common Worship* liturgical texts); the Church of Ireland (the law supports 'may' but does not suggest 'should'); and the Church in Wales (custom seems insufficient justification for the 'should' wording as it is not normative in practice).

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> Special provision may be made for parishes which in all conscience cannot accept the ministry of their own bishop for elements of episcopal ministry to be provided by another bishop as agreed from time to time with the diocesan bishop concerned.

In the revision process, groups studying three of the churches[9] indicated that this principle was not consistent with their law, and was in fact contrary to certain fundamental provisions. The principle was already expressed in permissive form ('may') so a solution like that used for Principle 65.5, above, was not possible. In this case, the committee's analysis of the legal evidence was that alternative episcopal oversight could no longer be described by a principle common to all the churches. This Principle was therefore deleted. Again, this does not imply any value judgment about the value of alternative episcopal oversight. There is merely a recognition that there is at present no legal commonality on this subject.

Principle 70, 'Marriage: nature, purposes and responsibilities', was the most difficult and controversial Principle discussed in the revision process. In 2008 it stated, *inter alia*:

> 70.1 Marriage, an honourable estate instituted by God, is an exclusive life-long union, signifying the mystical union that is between Christ and his Church, effected on the free exchange of consents between one man and one woman joined together by God as husband and wife and lasting until the death of one spouse.

The legal evidence reported to the revision committee showed that since 2008 the law of some churches[10] now permitted the marriage of two people of the same sex, whereas others (the majority) had not made such a change. In the case of other revisions, the revision committee worked by consensus, but in the case of Principle 70 decisions were made by majority vote.

Some members of the committee would have been happy with a revision along the following lines:

> Marriage, an honourable estate instituted by God, is a union between two persons, intended by the parties to be lifelong, which is effected on the free exchange of consents between those persons.

9 The Anglican Church in Aotearoa, New Zealand and Polynesia; the Anglican Church of Canada; and the Church of Ireland.

10 The committee was referred to the law in parts of the Anglican Church of Canada; in the Scottish Episcopal Church; and in the Episcopal Church (in the USA).

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However, other members of the committee did not find this to be an accurate expression of the law of the majority of churches. Feedback received from canon lawyers across the provinces of the Communion also indicated that such a revision would be considered by many to be inaccurate or misleading.

Another option might have been to delete this Principle entirely, as with Principle 38.5, discussed above. However, given the fundamental place of marriage in the canon law of every church, and the fact that later (uncontroversial) Principles referred to marriage, this did not seem appropriate.

Therefore, the final decision taken was simply to state the situation as reported in the legal evidence. In the 2022 edition, Principle 70 now reads:

> As stated in the preamble to Part VI, the working groups operating under the auspices of the Ecclesiastical Law Society, as part of the revision process worldwide for this second iteration of the principles, reported significant changes in some church laws with regard to whether two persons of the same sex may marry. As a result, there are now differences between the laws of the churches of the Communion on this point. Some churches provide only for marriage between one man and one woman. Some churches also provide for marriage between people of the same sex.
>
> Mindful of this difference, and of the principle of autonomy, it has not been possible to discern a common principle of canon law on who may marry whom.
>
> Unlike the other 2022 revisions, which proceeded by consensus, the revision committee decided the method to record this development by majority vote.

The text of the 2008 Principle was also included in the 2022 edition for information.

Interestingly, the Archbishop of Canterbury's opening remarks at the Lambeth Call on Human Dignity (at the Lambeth Conference 2022) took the same approach as the 2022 Principles in setting out the two positions side by side. He said:

> The Call states that many Provinces – and I say again, I think we need to acknowledge it's the majority – continue to affirm that same-gender marriage is not permissible. The Call also states that other provinces have blessed and welcomed same sex union or marriage, after careful theological reflection and a process of reception. In that way, it states the reality of life in the Communion today.[11]

11 'Lambeth Call on Human Dignity: Read Archbishop Justin's remarks', available at <https://www.archbishopofcanterbury.org/speaking-writing/speeches/lambeth-call-human-dignity-read-archbishop-justins-remarks>, accessed 7 August 2022.

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The aim of the *Principles* continues to be exactly that: not an assertion of what should or should not be, but a statement of the legal reality.

It can be confidently hoped that three things will characterise the next phase of the *Principles*' life. First, that this new edition will be deployed in the growing number of worldwide ecumenical conversations that use canon law as a means of furthering ecumenism. Secondly, that the *Principles* will be studied across the Communion as a means both of celebrating what Anglican churches have in common and also of learning from one another.[12] Thirdly, that because of this work and the relationships that are formed through it, the next revision will be able to draw on the expertise of an even greater number of canon lawyers from across the Communion. This will ensure that the *Principles* continue fully to reflect all that the laws of Anglican churches have in common.

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12 An early example is the review of the 2022 *Principles* by Bishop Christopher Hill, to be published in a forthcoming edition of the *Journal of Anglican Studies*.