

# CANON LAW AND COMMUNION

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## INTRODUCTION

### 1. The Scope of the Study

This paper deals, in an introductory way, with the role which the canon law of individual Anglican churches plays in the wider context of the global Anglican Communion.<sup>1</sup> Part I reflects on the two main experiences which Anglicans have concerning ecclesial order and discipline: that of the juridical order of each particular church, and that of the moral order of the global communion; it also examines canonical dimensions of inter-Anglican conflict. Part II deals with the contributions which individual canonical systems, the Anglican common law (induced from these systems), and the canonical tradition currently make to global communion.<sup>2</sup> Part III assesses critically these contributions, their strengths and weaknesses, illustrates the potential of individual canonical systems for the development of global communion, and reflects on practical ways in which that potential might be fulfilled. Generally, the paper aims to stimulate discussion as to whether there exists a sufficient understanding of Anglican common law to justify: (a) the issue, by the Primates Meeting, of a statement of this, being a description, which itself would not have the force of law, of those parts of Anglican common law which deal with inter-Anglican relations, (b) incorporation of the statement by individual churches in their own legal systems, so that (c) each church has a meaningful and binding body of communion law, in order (d) to enhance global communion and inter-Anglican relations, and to reduce the likelihood of inter-church disagreement.

### 2. The Meanings of Canon Law

Like all major institutions in any society, which have a visible social structure, each church has its own internal legal system. Canon law is the generic title given to the legal system, that body of religious law, which episcopal churches, of the catholic and apostolic tradition, create through human action to regulate their internal life—their government, ministry, doctrine, liturgy, rites and property. Canon law is distinguished from the law of the State, though of course it is a shared experience of each church that it has to deal with the State in which it exists.<sup>3</sup> From the Anglican perspective, the expression ‘canon law’, as the internal or domestic law of the church, has three meanings. First, canon law is understood in a narrow sense: **canon law**

<sup>1</sup> For their comments on this paper, I am very grateful to my colleagues at the Centre for Law and Religion, Law School, Cardiff University, Wales, UK, namely Chancellor Mark Hill, Mr. Anthony Jeremy, Revd. Gregory Cameron, Mr. Javier Garcia Oliva, Ms. Joanna Nicholson, and Mr. David Lambert as well as to many others including Revd Dr Robert Ombres OP and Professors David Ford and Dan Hardy.

<sup>2</sup> Much of the legal evidence employed in this study is derived from N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998); this book does not, however, address many of the specific questions raised by this paper. Needless to say, some of the legal provisions discussed in the book, based on a study carried out in 1996 and 1997, may now be out of date.

<sup>3</sup> Uniquely in the Anglican Communion, in England, the canon law of the Church of England is treated as part of the law of the land, by virtue of the established position of the church: see M. Hill, *Ecclesiastical Law* (2nd edn. Oxford, 2001) ch. 1; for other Anglican churches, see N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) ch. 1.

is one specific category amongst several different bodies of law operative within a particular church;<sup>4</sup> that is, the code of canons only.<sup>5</sup>

Secondly, canon law is understood in a wider sense, as **the formal collection of several bodies of law** operative within a particular Anglican church; canon law embraces all formal laws irrespective of whether a special title is given to specific categories of law within the church, and includes the constitution, the code of canons, and provisions found in other formal regulatory instruments created by the use of delegated powers.<sup>6</sup>

Thirdly, in its widest sense, canon law may be understood as **the entire system of ecclesiastical regulation** in a particular Anglican church; signifying a wide range or network of regulatory experiences, canon law embraces all those humanly-created normative entities which a church uses and applies directly as an authority to regulate life in that church.<sup>7</sup> This range of entities covers not only formal law, but also informal norms including unwritten custom, pastoral regulations or directions of bishops, decisions of church tribunals, as well as the principles of the canonical tradition.<sup>8</sup> These entities may or may not appear in the formal, written law of the church (the constitution or canons). Nevertheless, they are used to regulate conduct, and are treated as equivalent to canon law; the test is whether they are treated as binding authorities. Indeed, ecclesiastical regulation may be by informal administrative rules,<sup>9</sup> in the form of policy documents, guidelines and codes of practice, each increasingly used by church authorities to regulate particular subjects and to supplement formal law; however, these may be distinguished from canon law in the strict sense.<sup>10</sup>

### 3. The Relationship between Canon Law and Divine Law

In the canonical tradition, divine law (as expressed in Holy Scripture) is usually conceived as distinct from canon law, the latter being of human creation.<sup>11</sup> Divine law is the dynamic behind all canon law.<sup>12</sup> Generally divine law is treated as a *source* of humanly-made canon law and, therefore, is strictly distinguished from canon law. Divine law is used as a determinant in the process of creating canon law. Neverthe-

<sup>4</sup> National, regional or provincial churches each have their own national law, regional law or provincial law. These laws are usually located in three distinct sources: a constitution, a code of canons, and a miscellany of other regulatory instruments (such as regulations, rules, decrees, or acts). In addition, many churches have diocesan law, similarly in the form of a constitution and a code of canons. These are all specific bodies of law, and canon law signifies (narrowly) a church's code of canons: the constitution contains constitutional law, the code of canons contains canon law, and so on.

<sup>5</sup> Eg the Church of the Province of Southern Africa has a constitution, a code of canons, and collections of other instruments (such as *acts* of the provincial synod), but the Scottish Episcopal Church has only a code of canons (containing the church's constitution) which are supplemented by resolutions of its synod.

<sup>6</sup> For canon law as the whole body of formal law applicable to a church, see eg T. Briden and B. Hanson (eds), *Moore's Introduction to English Canon Law* (3rd edn., London, 1992) ch. 1.

<sup>7</sup> In other words, canon law, in the narrow sense, may not be recognised in the experience of some churches as a regulatory authority or instrument – regulation operates in another guise.

<sup>8</sup> Canon law in this wide sense might also include the Anglican common law and the canonical tradition: see below, Part II.B.

<sup>9</sup> See eg Papua New Guinea, Diocese of Port Moresby, canon 10(3): 'Bishop's Guidelines'.

<sup>10</sup> These by definition do not bind but are commonly treated as if they bind: see eg N. Doe, *The Legal Framework of the Church of England* (Oxford, 1996) 17ff; and N. Doe, 'Ecclesiastical quasi-legislation', in N. Doe, M. Hill and R. Ombres (eds), *English Canon Law* (Cardiff, 1998) 93.

<sup>11</sup> Tradition, doctrine and church teaching are distinguished from canon law, though they function as sources of canon law, and are used as such in the legislative process: see below Part I.

<sup>12</sup> It would be instructive to determine which canon laws, for Anglicans, are representations of divine law.

less, in the canonical tradition, divine law has also been used as a yardstick against which to measure the validity of canon law, and there is evidence in the canonical tradition of the outlook that canon law in conflict with divine law is void: this approach is summed up in the maxim *lex injusta non est lex*.<sup>13</sup> However, whilst the concept of divine law is implicit in Anglican canonical thought,<sup>14</sup> there is no obvious legal evidence which indicates a general practice in the laws of Anglican churches that divine law binds directly in a juridical sense, nor that divine law vitiates contrary canon law.<sup>15</sup>

## PART I

### JURIDICAL AND MORAL ASPECTS OF THE ANGLICAN EXPERIENCE

In the general context of unity, order, discipline and organisation, Anglicans have two experiences. On the one hand, Anglicans live, in their local ecclesial setting, in the context of faith at work in a juridical order: they function within the framework of their own church and its particular canonical system. Each church, as a visible society, is the subject of its own binding **juridical order**, consisting of enforceable canon law, in the wider sense, which itself has a distinct theological and ecclesiological dimension. On the other hand, Anglicans live, in the wider environment of the Anglican Communion, in the context of faith at work in a **moral order**: the Anglican Communion functions within the framework of its own non-legal, moral or conventional system; in turn, the community of churches (the Communion) is the subject of its own non-binding, persuasive moral order, consisting primarily of the conventional principles of communion and autonomy, which themselves have a distinct theological dimension; in the global environment, these principles of communion and autonomy have no direct juridical force or enforceability.

#### 1. The Juridical Order and the Purposes of Canon Law: Ecclesiology and Service

Anglican churches are canonical churches. Canon law, in its widest sense, is not an end in itself; it is a means to an end. Canon law is the servant of the church: it exists in each church to enable it to fulfil its particular mission; it is an instrument of unity and communion within a particular church. The purposes of canon law operate on both the ecclesiological and practical levels. On **the ecclesiological level**, canon law is the juridical implementation of theological data constructed on the revelation of God: God reveals; the church reflects on revelation; the church formulates theology; theology provides the church with an ecclesiology, a vision and definition of its purposes and of Christian values; and each church implements these values in the form of canon law; canon law provides norms of action to implement values designed to serve the purposes for which the church exists.<sup>16</sup> As such, canon law has a theologi-

<sup>13</sup> In Roman Catholic canon law, particular provisions in the Code of Canon Law (1983) are not uncommonly presented explicitly as being based on divine law, and, eg, civil law applies to the church unless contrary to divine law (canon 22); customary law in conflict with divine law is void (canon 24).

<sup>14</sup> For the juristic role of the Word of God, see N. Doe, *The Legal Framework of the Church of England* (Oxford, 1996) ch. 2: Thirty-Nine Articles, Art. 20: 'it is not lawful for the Church to ordain any thing which is contrary to God's Word written'.

<sup>15</sup> However, in Australia, the appellate tribunal may declare legislation of General Synod to be void if inconsistent with the Fundamental Declarations of the church (Const. V.29); this arrangement is rare. In the experiences of some Anglican churches, it might be that Holy Scripture and tradition are used directly as binding normative sources in decision-making. For other Anglicans, these are sources of canon law: they are not juridically binding for particular cases until incorporated in formal church law: see also, M. Hill, 'Gospel and Order', 4 *Ecc LJ* (1996) 659.

<sup>16</sup> See eg T. Urresti, 'Canon law and Theology: two different sciences', 8(3) *Concilium* (1967) 10.

cal basis:<sup>17</sup> theology works through canon law;<sup>18</sup> there is a theology *of* canon law and a theology *in* canon law; canon law is applied ecclesiology, and, for some has a sacramental quality.<sup>19</sup>

**On the practical level,** the purposes of canon law, in its wide sense, are to facilitate and to order the life and mission of the particular church.<sup>20</sup> Canon law, in a fundamental, practical way, constitutes the particular church: it liberates and it requires self-restraint. Facility and order are two concepts commonly used by legislators in the shaping of law, and by administrators and judicial bodies in its application. Canon law is facilitative because it provides *facilities* to enable the church to serve God and the people; it gives meaning to these facilities by conferring jurisdiction, and by defining relationships within a church through rights and duties.<sup>21</sup> By way of contrast, canon law is an instrument of ecclesial *order*, organisation and discipline—it exists for spiritual welfare and for good order: it sets limits on the exercise of ecclesiastical jurisdiction, it protects rights, and it provides for resolution of conflict.<sup>22</sup> Moreover, facility and order are mutually supportive.<sup>23</sup> Indeed, as each particular church is both a social and visible communion, canon law provides for that communion in the mutual relationships of the faithful: **canon law facilitates and orders communion within the particular church.**<sup>24</sup>

## 2. The Moral Order of Inter-Church Relations: Communion and Autonomy

In the wider environment of the worldwide Anglican Communion, the experience of Anglicans is that they encounter the challenges of a moral order. The Anglican Communion is a community of *sui juris* or self-governing churches in communion with the See of Canterbury,<sup>25</sup> and supposedly with each other. Fundamental to this fellowship of faith is **the moral principle of communion.** Anglican churches are assembled under the moral authority of the instruments of Anglicanism. First, there is **the moral authority of the instruments of faith:** Holy Scripture, Tradition and Reason; churches are held in communion by loyalty to scripture, the sacraments of baptism and eucharist, the historic episcopate, liturgical tradition and common patterns of worship.<sup>26</sup> Adherence to these instruments is a matter of faith and moral choice for particular churches.<sup>27</sup> Secondly, there is **the moral authority of the institutional in-**

<sup>17</sup> T. Briden and B. Hanson (eds), *Moore's Introduction to English Canon Law* (1992) 1.

<sup>18</sup> See N. Doe, 'Towards a Critique of the Role of Theology in English Ecclesiastical and Canon Law', 2 *Ecc LJ* (1990–2) 328.

<sup>19</sup> R. Ombres, 'Ecclesiology, Ecumenism and Canon Law', in N. Doe, M. Hill and R. Ombres (eds), *English Canon Law* (Cardiff, 1998) 48.

<sup>20</sup> ACC—1979, 6: Ontario: Guidelines for Provincial Constitutions: a constitution 'should allow on the one hand for the operation of the Holy Spirit in continuous growth, development and adjustment to changing ecclesiastical and social environments, while on the other hand providing a basis of stability from which to make appropriate alterations from time to time'.

<sup>21</sup> Law provides and empowers institutions for governance: it enables episcopal leadership and empowers the laity to participate in church government; it distributes functions and responsibilities among clergy and laity; it confers rights of access to the ministrations of the church; it secures the stewardship of property.

<sup>22</sup> See *The Canon Law of the Church of England*, Report of Archbishops' Commission (London, 1947) 4.

<sup>23</sup> Canon law provides good order to enable the church to fulfil its mission: see N. Doe, *The Legal Framework of the Church of England* (Oxford, 1996) 43f; also canon law assists the church to meet the demands of civil law applicable to it.

<sup>24</sup> For canon law and communion, as reciprocity among the faithful within a church, see M. Lejeune, 'Demythologising Canon Law', 21 *Studia Canonica* (1987) 5.

<sup>25</sup> LC 1930, Res. 49: the Communion is 'a fellowship within the One Holy Catholic and Apostolic Church, of those duly constituted dioceses, provinces or regional Churches in communion with the See of Canterbury'; there are also of course obvious historical links between churches.

<sup>26</sup> LC 1998, Res. III.8; see also LC 1998, Res. III.1

<sup>27</sup> There may be moral duties to comply with these instruments, at this level, but no legal duties: the question of moral sanctions is separate.

**struments:** at the global level, the Archbishop of Canterbury, the Primates Meeting, the Lambeth Conference, and the Anglican Consultative Council,<sup>28</sup> exercise no legal authority over individual churches: their authority and leadership is moral, and their decisions do not bind particular churches, unless and until incorporated in their canonical systems as a matter of law.<sup>29</sup> A church becomes a member of the Anglican Communion when it displays loyalty to the instruments of faith, and a practical expression of membership is participation by a church in the work of the institutional instruments of the Anglican Communion.<sup>30</sup>

Thirdly, there is **the moral authority of the principle of autonomy:** each church is free to govern itself. This principle of autonomy is a conventional compact, often linked to the principle of subsidiarity;<sup>31</sup> it is summed up in the idea that 'the true constitution of the Catholic Church involves the principle of the autonomy of particular Churches based upon a common faith and order'.<sup>32</sup> The churches 'promote within each of their territories a national expression of Christian faith, life and worship'.<sup>33</sup> However, it is an autonomy within which there is local ecclesial unity: the Lambeth Conference 'is committed to maintaining the overall unity of the Anglican Communion, including the unity of each diocese under the jurisdiction of the diocesan bishop'.<sup>34</sup>

Fourthly, then, there is **the moral authority of the principles of inter-church relations.** Autonomy itself implies the notions of facility and order, freedom and self-restraint.<sup>35</sup> The Lambeth Conference has enunciated several principles designed to regulate inter-church relations and to limit the exercise of autonomy. For example: each church should respect the autonomy of each other church;<sup>36</sup> two bishops may not exercise jurisdiction in the same place;<sup>37</sup> no bishop or cleric should minister in another diocese without the consent of the host diocesan bishop;<sup>38</sup> churches should co-operate to further the mission of the whole church;<sup>39</sup> dioceses should develop companion dioceses;<sup>40</sup> 'the life, polity and liturgy of churches everywhere should exemplify [an] understanding of our community and common life'.<sup>41</sup> What all these

<sup>28</sup> LC 1998, Res. II.6: this 'reaffirms the primary authority of the Scriptures'. See also the Chicago-Lambeth Quadrilateral.

<sup>29</sup> This aspect of the moral order is summed up in statements of the Lambeth Conference: churches are bound together 'not by a central legislative and executive authority, but by a mutual loyalty sustained through the common counsel of the bishops in conference' (LC 1930, Res. 48.49); of the institutional authorities, the ACC alone has a legal structure (a constitution) with defined functions.

<sup>30</sup> 'Since the Anglican Communion does not have a central body with canonical authority, the list [of Anglican churches] is authorised by the Archbishop of Canterbury and the Anglican Primates' (Handbook, 1994, p.19).

<sup>31</sup> Virginia Report, ch. 4.

<sup>32</sup> LC 1930, Res. 48.49.

<sup>33</sup> LC 1930, Res. 49.

<sup>34</sup> LC 1998, Res. III.2. At the global level, the principle is obviously perceived as having a theological dimension, but its status at this level, as issuing from the moral authority of the Lambeth Conference, is moral, not legal. At the local ecclesial level, when expressed in the law of a particular church, the principle has a legal status within that church, where it also functions as a political fact (see below).

<sup>35</sup> LC Report 1988, p.298: 'in the Communion as a whole, the instruments of Communion and the organs of consultation provide appropriate checks and balances for each other ... [we] seem to have a view of dispersed authority which relates not only to the sources of authority but also to its exercise'.

<sup>36</sup> LC 1978, Recommendation I. This is one of the 'principles of church order'.

<sup>37</sup> LC 1897, Res. 24; LC 1968, Res. 63.

<sup>38</sup> LC 1878, Rec. 1.

<sup>39</sup> LC 1930, Res. 47.

<sup>40</sup> LC 1998, Res. III.3.

<sup>41</sup> LC 1998, Res. III.22.

instruments and principles have in common is that they have a persuasive, moral authority, at a global level, over the churches of the Anglican Communion; they are exhortatory not mandatory. The bottom line is that *proprio vigore* each instrument of Anglicanism has only persuasive or conventional authority for individual churches.

### 3. The Anatomy of Inter-Church Conflict: Causes and Effects

It is difficult to identify precisely the anatomy of contemporary disagreements and conflicts between Anglican churches.<sup>42</sup> The problems are complex and multi-faceted: theology, tradition, culture, human experience, and even civil law, would all seem to play a part.<sup>43</sup> Categorisation of the conflicts remains problematic.

#### (1) The Role of the Moral and Juridical Orders in Cases of Conflict

One practical feature of inter-church conflict is that it is in part encouraged by the relationship between the juridical and the moral orders. There are both fundamental similarities and differences between these two orders. On the one hand, there are **similarities** in terms of their respective purposes: both orders exist to serve the salvation of souls; canon law seeks to effect communion among members of the local church, the moral order seeks communion between churches; the local juridical order facilitates episcopal oversight in the particular church, the moral order seeks to facilitate episcopal counsel at a global level; both orders have a strong theological dimension and the same source in divine law; canon law seeks respect and reciprocity in the mutual relations of members of the local church, the moral order to achieve mutual respect and interdependence at the global level. These similarities, in the two orders, are not the cause of current inter-church conflict.

On the other hand, **differences** between the two orders exist in terms of form and effect: the moral order consists of principles expressed with a high level of generality, the juridical order is expressed with reasonable precision; the global order is nurtured by episcopal experience, the juridical order by the direct participation of the laity in church government; the global order is a system of persuasive principles and instruments, not binding on individual churches, the local order binds churches as a matter of law; the global order is unenforceable, the juridical order is enforceable. These differences might contribute to inter-church conflict: there is no developed symbiosis between the juridical and moral orders,<sup>44</sup> no concerted attempt to translate the moral order of global communion into the juridical order of the local communion of every church. Translation of the global moral order to the local juridical order would make the former binding and it might reduce the possibility of conflict. In short, it is the exercise of autonomy,<sup>45</sup> the freedom afforded by the local juridical order, and the unenforceability of the moral order, that causes conflict.<sup>46</sup>

<sup>42</sup> The problem areas include: the blessing of same sex partnerships; ordination and homosexuality; coordinate episcopal jurisdiction; the extra-territorial exercise of episcopal jurisdiction; lay eucharistic presidency; the recognition of ministry; female bishops and priests; and perhaps polygamy.

<sup>43</sup> For analysis of the role of culture at the Lambeth Conference 1998, see P. Gibson, *Discerning the Word* (Toronto, 2000).

<sup>44</sup> Inter-church conflict may be caused in part by the very existence of these two orders. See also P.H.E. Thomas, 'Some Principles of Anglican Authority: an Investigation of Constitutional Documents in the Anglican Communion', in *Four Documents on Authority in the Anglican Communion*, from the Anglican Primates' Meeting, Washington, DC, 1981, 18: 'The relationship between the local and the universal church is one of the enduring problems of ecclesiology'.

<sup>45</sup> More precisely, the exercise of autonomy means the exercise of powers by ecclesiastical authorities, legislative, executive and sometimes judicial.

<sup>46</sup> The proposals contained in D.W. Gomez and M.W. Sinclair (eds), *To Mend the Net: Anglican Faith and Order for Renewed Mission* (Carrollton, Texas, 2001), it would seem, suggest the reverse, the translation of the juridical order into the moral order.

## (2) The Role of Canon Law in Conflict

A second possible feature of conflict, the canonical dimension, is worthy of exploration. The role of canon law in inter-church disagreements may be conveniently understood in the context of the case of **the ordination of practising homosexuals**: The canon law of churches invariably requires that ordination candidates must be suitable; it would seem to be a principle of Anglican common law that determination of suitability belongs canonically to the bishop.<sup>47</sup> In the formal law of most churches, practising homosexuality is not explicitly listed among the canonical bars to ordination: suitability for ordination is a matter of discretion for the bishop. On the one hand, in many churches, as a result of interpretation of scripture and tradition, and perhaps the influence of culture, episcopal policy, in the exercise of canonical discretion about suitability, forbids their ordination.<sup>48</sup> On the other hand, in ECUSA, as a result of reflection on theology and human experience, and judicial decision,<sup>49</sup> episcopal policy, in the exercise of canonical discretion on suitability, allows ordination of practising homosexuals. But in both cases the formal canon law is silent on the matter.<sup>50</sup> The conflict, therefore, is not a conflict of laws.<sup>51</sup> Rather than a canonical conflict, it is a conflict between opposing exercises of canonical episcopal discretion: the conflict is political (a clash of policies) or moral (about the morality of conduct).<sup>52</sup>

It is when these opposing uses of discretion are placed in the single system of the global communion that the question arises, as a matter of interpretation, as to whether the permissive policy is in conflict with Lambeth Conference resolutions.<sup>53</sup> Under the juridical order of ECUSA, the exercise of episcopal discretion appears to be permissible; but under the moral order of the global communion, its permissibility is problematic. As to consecration in one province of 'missionary bishops' for ministry in another Anglican church, the laws of some churches explicitly forbid this,<sup>54</sup> and most do so by implication;<sup>55</sup> similarly, the exercise of visitation is confined to a bishop's own diocese;<sup>56</sup> such cases would seem to be a breach of both the juridical and moral orders.

## (3) Ecclesiastical and Secular Parallels

A number of obvious comparisons may be made between the Anglican experience of disagreement and other ecclesiastical and secular experiences. The corporate moral order (or discipline) of the worldwide Anglican Communion is very different from

<sup>47</sup> For fundamental Anglican canon law, see below.

<sup>48</sup> It might be that the approach of the secular State (and its law) to practising homosexuality may also condition ecclesiastical approaches of the particular church in that State.

<sup>49</sup> *Stanton (Bishop of Dallas) v Righter* (1996); see also ECUSA, Cans. III.4.1: 'No one shall be denied access to the selection process for ordination ... because of ... sexual orientation'.

<sup>50</sup> Presumably, listing practising homosexuality in canon law as a bar to ordination would prevent bishops from ordaining practising homosexuals. In some churches the law expressly provides that divorce is an impediment to ordination, but the law also provides a system of dispensation from this general rule: see eg England, canon C 4, paras 3, 3A.

<sup>51</sup> In turn, the very silence of the laws on this subject may itself be a contribution to conflict.

<sup>52</sup> It may, however, be a canonical conflict in the widest sense of the term 'canon law': see above.

<sup>53</sup> LC 1998, Res. I.10: 'This Conference ... (e) cannot advise ... ordaining those involved in same gender unions'.

<sup>54</sup> See eg West Indies, canon 8: episcopal declaration: 'I will respect and maintain the spiritual rights and privileges of all Churches in the Anglican Communion'. See also ECUSA, Const. VI.1: 'The House of Bishops may establish a Mission in any area not included within the boundaries of any Diocese of this Church or of any Church in communion with this Church, and elect or appoint a Bishop therefor'.

<sup>55</sup> See eg Rwanda, Const. Arts. 35, 36: the constitution provides only for the election and consecration of diocesan bishops, the election conforming to the diocesan constitution.

<sup>56</sup> See eg West Indies, canon 9.2.

the global juridical order of the Roman Catholic Church: its universal Code of Canon Law (1983) applies to all (Latin) particular churches throughout the world: problems are resolved by applying the code or by an exercise of supreme authority by the pontiff. For Anglicans there is no formal global corpus of binding canon law and there is no global authority with jurisdiction over all churches. The Code of Canon Law (1990) of the Eastern Catholic Churches applies to the twenty-one autonomous churches of that communion, and problems are resolved whilst at the same time respecting their individual autonomy.<sup>57</sup> There are very close parallels, however, between the Anglican experience and that of sovereign secular states.<sup>58</sup> To cure and to obviate disagreements, agreement between states is commonly reached by the entering of treaties: the moral order of the comity of nations, and the resolution of disagreement, is effected by inter-state treaties, which have status in public international law, but normally these have no effect within states unless and until incorporated in the municipal law of the state party to that treaty.<sup>59</sup>

## PART II

### CANON LAW AND THE PROMOTION OF COMMUNION

This part examines the current role of the juridical order of each Anglican church in the maintenance and promotion of global communion. It also explores the role of Anglican canon law as an abstract reality, and the significance of the canon law tradition.

#### A. The Role of Individual Canonical Systems

Whether or not canonical systems of individual churches promote global communion is a question of juridical evidence from each church. The task of identifying juridical aspects of global communion, to determine if this is a reality in individual canonical systems, is a scientific process: it is a search for extrovert laws which reach out, explicitly or implicitly, to the Anglican Communion, its instruments, and inter-Anglican relations.<sup>60</sup>

##### 1. Canon Law as a Centripetal Force

An examination of individual canonical systems provides evidence that global communion is a juridical reality for some churches and in certain contexts. The canon law of a church promotes communion, it is a centripetal force, in so far as it pulls that church towards the See of Canterbury and towards other Anglican churches. There are many examples from individual canonical systems in which global communion is, expressly or implicitly, a feature of canon law. These are what might be styled 'communion laws'. Some examples.

First, with regard to **church identity**, the law of a church occasionally identifies that church with the See of Canterbury and with the Anglican Communion. Sometimes laws of a church deal directly with its own membership of and commitment to the Anglican Communion—typically, some laws present the church descriptively 'as a constituent member of the Anglican Communion ... in communion with the See of

<sup>57</sup> The Anglican experience might be closer to that of autocephalous Orthodox churches, regulated by their individual canonical systems: see J.H. Erikson, *The Challenge of Our Past: Studies in Orthodox Canon Law and Church History* (New York, 1991) 91.

<sup>58</sup> The closest parallel may be that of the Commonwealth.

<sup>59</sup> See eg J.G. Starke, *An Introduction to International Law* (9th edn.) (London, 1984). However, states are sovereign, churches are not.

<sup>60</sup> I am very grateful to the Revd Gregory Cameron for suggesting the terms 'centripetal' and 'centrifugal' as tools to classify these laws.



Canterbury',<sup>61</sup> or they recognise the church as being in communion with 'the Church of England and all other Churches of the Anglican Communion',<sup>62</sup> whilst others 'declare [the] Church to be, and desire that it should continue, in full communion with the Church of England',<sup>63</sup> or that the church 'will maintain communion with the sister Church of England',<sup>64</sup> Whilst the law of one church treats membership of the Anglican Communion as indissoluble,<sup>65</sup> the law of another empowers the episcopal synod, subject to the consent of the general synod, to remove unilaterally a church from the canonical list of churches in communion with it; the list includes the churches of the Anglican Communion.<sup>66</sup> Church identity provisions of this sort, then, range from descriptive statements without any obvious normative force for the church in question, to prescriptive rules which import a duty to maintain communion. Such provisions do not appear in the formal laws of the majority of Anglican churches, nor is it common for the formal law even to define the Anglican Communion.<sup>67</sup> Indeed, in one church, canon law defines the Anglican Communion as 'a federation of autonomous provinces which maintain fraternal contact on a global level'.<sup>68</sup>

Secondly, in the area of **ecclesiastical government**: sometimes the law of a church presents its own territorial organisation as a province as 'in accordance with the accepted traditions and usages of the Anglican Communion',<sup>69</sup> but this is not common; provisions empowering churches to effect constitutional union with other Anglican churches are common;<sup>70</sup> and sometimes, but this is rare, laws impose a duty on a church to co-operate with other Anglican churches.<sup>71</sup> There is considerable evidence that legislatures of individual churches (synods, councils and conventions) are limited in the exercise of their legislative power by the Anglican instruments of faith: the incorporation of these instruments in the constitutions of churches means that legislatures, on the face of it, are forbidden to make law which violates the Anglican instruments of faith; but, usually, there is no explicit mention of the Anglican Communion itself in provisions setting out these limitations.<sup>72</sup> Nevertheless, some laws prescribe that the Fundamental Declarations of a church cannot be altered without being 'endorsed by the Archbishop of Canterbury as not affecting the terms of Communion between the Church of this Province, the Church of England and the rest of the Anglican Communion';<sup>73</sup> in one church the law provides that for new legislation 'ratification will be sought from the Anglican Consultative Council'—this is exceptional.<sup>74</sup> Occasionally, the law of a church provides that its central legislature shall be subordinate 'to the higher authority of a General Synod of the Churches of the

<sup>61</sup> ECUSA, Const. Preamble.

<sup>62</sup> New Zealand, canons G.XIII.6.

<sup>63</sup> Canada, Declaration of Principles, Solemn Declaration, 1.

<sup>64</sup> Ireland, Const. Preamble and Declaration, III: 'and with all other Christian Churches agreeing in the principles of this Declaration'.

<sup>65</sup> Venezuela, Const. Art. 1: 'The Anglican Church in Venezuela is an ecclesiastical jurisdiction which forms an indissoluble part of the Anglican Communion'.

<sup>66</sup> Scottish Episcopal Church, canon 15: 'The Scottish Episcopal Church recognises as in full communion with itself the Churches of the Anglican Communion'. For the list, see the Schedule to the canon.

<sup>67</sup> Definition of the Communion is usually left to catechetical documents: see eg New Zealand, Prayer Book 1989, 936.

<sup>68</sup> Chile, canon A7.

<sup>69</sup> See eg South East Asia, Const. Preamble.

<sup>70</sup> See eg South East Asia, Declarations, 6; Central Africa, Fundamental Declarations, VI.

<sup>71</sup> Korea, Fundamental Declaration of Faith and Rites: 'We believe that for the unity of Christ's Church we must enter into co-operation with all churches on the basis of our faith and practice as a member Church of the Anglican Communion'.

<sup>72</sup> For entrenchment, see eg Australia, Const. XI.66.

<sup>73</sup> Central Africa, Fundamental Declarations, VIII. and canon 33.1–2.

<sup>74</sup> Southern Cone, Const. Art. 6.4.

Anglican Communion', were such an institution to exist.<sup>75</sup> Another feature of the centripetal force of individual canonical systems is their explicit (but occasional) incorporation of resolutions of the Lambeth Conference.<sup>76</sup>

Thirdly, in the area of **ministry**, often law makes communion and autonomy a binding juridical reality for a particular church: occasionally the law of a church requires bishops to 'respect and maintain the spiritual rights and privileges of all Churches in the Anglican Communion'.<sup>77</sup> Some laws forbid the use of clerical titles without persons having been 'ordained in conformity with the procedure acknowledged by the worldwide Anglican Communion'.<sup>78</sup> Sometimes, a prohibition against parallel episcopal jurisdictions surfaces in actual law.<sup>79</sup> In some churches the law provides that a diocesan bishop may be elected from that church 'or from any Church in full communion' with it,<sup>80</sup> and in others, when the electoral college fails to elect a bishop, 'the appointment shall be delegated to the Archbishop of Canterbury'.<sup>81</sup> Many churches have laws requiring them to communicate externally information about new episcopal appointments.<sup>82</sup> Often laws provide for recognition of orders for the purposes of ministry in the host church, and these forbid the exercise of ordained ministry in a diocese of another church without the consent of the bishop of the host diocese.<sup>83</sup> Some laws provide for episcopal declarations that a bishop 'will pay all due honour and deference to the Archbishop of Canterbury',<sup>84</sup> and others recognise the Archbishop of Canterbury as having 'the first place' among 'the Metropolitan' or 'the Primates of the Anglican Communion'.<sup>85</sup> Of course, in churches constituted as extra-provincial dioceses, the law provides for the Archbishop of Canterbury to exercise a general metropolitan jurisdiction.<sup>86</sup>

Fourthly, in the area of **doctrine and liturgy**: as a generalisation, of course, churches are united positively in that their laws agree about the sources of doctrine as normative in matters of faith: Scripture, the creeds, the dominical sacraments and, for a large number, the Thirty-Nine Articles of Religion;<sup>87</sup> and sometimes the law provides that these are operative 'as the Anglican Communion has received them'.<sup>88</sup> Whilst various models of doctrinal law exist in churches, some laws impose a duty on a church, in exercising a right to develop and modify liturgy, to avoid any change that would affect Holy Scripture and 'other norms relevant to the faith of the Anglican Communion'.<sup>89</sup> The law of other churches disclaims their own right to depart from

<sup>75</sup> Southern Africa, Const. Art. VI.

<sup>76</sup> Eg for incorporation of LC 1948, Res. 37, on duties of church membership, see England, Act of Convocation, 1953–54, 173.

<sup>77</sup> West Indies, Cans. 8.

<sup>78</sup> Rwanda, Const. Art. 9.

<sup>79</sup> ECUSA, canons I.15.1, 7.

<sup>80</sup> Southern Africa, canon 4(1).

<sup>81</sup> Central Africa, canon 3: the archbishop must act in conjunction with two other bishops of the Anglican Communion nominated by the college.

<sup>82</sup> See eg Central Africa, canon 3.5.

<sup>83</sup> See eg England, the Overseas and Other Clergy (Ministry and Ordination) Measure 1967: recognition is in the keeping of the archbishops. See also canon C 8.

<sup>84</sup> West Indies, canon 8. This incorporates LC 1897, Res. 9.

<sup>85</sup> Sudan, Const. Art. 2: among the Metropolitan: South East Asia, Const. Fundamental Declarations, 2: among the Primates.

<sup>86</sup> Portugal (Lusitanian Catholic Apostolic and Evangelical Church), Const. Preamble, 7.

<sup>87</sup> See N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) ch. 7.

<sup>88</sup> Melanesia, Const. Art. 1.A: 'The Church of this Province has no right to alter or depart from these standards, but has the right to make alterations in its forms of worship and discipline, so long as these are agreeable to Holy Scripture and other standards of faith as the Anglican Communion has received them'.

<sup>89</sup> Rwanda, Const. Art. 6.

the standards of faith and doctrine.<sup>90</sup> The laws of most churches require clergy to assent or subscribe to broadly the same historic instruments of faith.<sup>91</sup> Perhaps the best evidence that the Anglican Communion is a juridical reality in particular churches is the incidence of provisions dealing with doctrinal controversies: the laws of some churches provide that, if a disagreement in the church persists then it is to be referred, either for determination by the Archbishop of Canterbury,<sup>92</sup> or for consultation with the Anglican Consultative Council,<sup>93</sup> or the Archbishop of Canterbury or the Primate of the Anglican Communion,<sup>94</sup> or the Archbishop of Canterbury assisted by 'Bishops of the Anglican Communion'.<sup>95</sup> Similarly, in cases of liturgical disagreement within a church, laws sometimes provide for referral of the matter to the Archbishop of Canterbury,<sup>96</sup> or the archbishop and the primates of the Anglican Communion,<sup>97</sup> or, indeed, the Anglican Consultative Council.<sup>98</sup>

In sum, for many churches, the law ensures that particular churches keep in contact with the Anglican Communion, its instruments of faith, its traditions, and its institutional instruments—laws pull churches together and to Canterbury by making the concept of the Anglican Communion a juridical reality. The law, therefore, is intended to effect both freedom and self-restraint in the maintenance of bonds with other Anglican churches. Canon law is used as a means to the end of maintaining global communion—it requires churches to consider the Anglican Communion, to conform to the Anglican instruments of faith, and to work with the institutional instruments of the Anglican Communion, as a whole in their own life. Canon law, though, is not the only medium for Anglican churches to develop their relations. Though law may be silent, in practice many churches, whilst retaining their autonomy, have combined to form regional councils.<sup>99</sup>

## 2. Canon Law as a Neutral Force

By way of contrast, most canon law of particular churches is neutral with regard to the Anglican Communion. What may be classified as **introvert law** illustrates the neutrality of canon law to global Communion. In each church, canon law has no obvious function to effect bonds between that church and the See of Canterbury and other Anglican churches—canon law is indifferent to the global Communion. The canon law of each church is introspective, it does not look outwards to the global Communion, but inwards to the internal regulation of the church: it exists, as we have seen, simply to facilitate and order the life of *that* church; it deals with the

<sup>90</sup> See eg West Indies, Declaration of Fundamental Principles, (d)–(e): 'We disclaim for ourselves the right of altering any ... of the standards of Faith and Doctrine'.

<sup>91</sup> See N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) 204–208. See also J. Fox (ed), *Render Unto Caesar: Church Property in Roman Catholic and Anglican Canon Law* (Rome, 2000).

<sup>92</sup> Central Africa, Const. Art. V: the archbishop is to act with two other bishops (one nominated by the bishop making the submission and the other by the Episcopal Synod); these must 'determine the matter in accordance with the formularies and doctrinal teaching of the Church of England, and their decision shall be final'.

<sup>93</sup> Uganda, Const. Art. II; Indian Ocean, Const. Art. 7(iii).

<sup>94</sup> South East Asia, Const. Fundamental Declarations, 4, 5, 6: also, 'whilst the Province is a fully autonomous part of the Anglican Communion, it shall nevertheless give due weight to the teaching and traditions of the Communion in the deliberations and decisions of its own ecclesiastical tribunals'.

<sup>95</sup> Southern Africa, canon 41 (Of Appeals).

<sup>96</sup> Central Africa, Const. Art. 5.

<sup>97</sup> South East Asia, Fundamental Declarations, 4: the Provincial Synod may consult in cases concerning 'adherence to ... the principles of worship' the Archbishop of Canterbury or the Primate of the Anglican Communion.

<sup>98</sup> Uganda, Const. Art. 3(i).

<sup>99</sup> This is as a result of eg LC 1978, Res. 12; LC 1988, Res. 18.

domestic affairs of the church.<sup>100</sup> Church property law is perhaps the most extreme example. Whilst there is much in common between bodies of property law operative in each church, fundamentally property laws are relative to the needs, circumstances, finances and conditions of particular churches. Above all, the relativity of church property laws is highlighted by the legal fact that they have to accommodate the requirements of the civil law of the States in which they exist.<sup>101</sup>

However, **extrovert law** also, paradoxically, illustrates the neutrality of individual canonical systems towards the Anglican Communion. The paradox is this: whilst introvert canon law does not have explicit regard to the Anglican Communion as a whole—it does not deal overtly or directly with inter-Anglican relations—laws governing ecumenical relations between Anglican churches and non-Anglican churches are more fully developed than those dealing with inter-Anglican relations. As a matter of juridical evidence, the laws of Anglican churches are markedly less well-developed with regard to inter-Anglican relations than they are with regard to ecumenical relations. Naturally, ecumenical law is by nature extrovert.<sup>102</sup> Increasingly, many churches now regulate ecumenism by means of law. In several churches a set of basic ecumenical duties is incorporated into the law of the church: to maintain fellowship,<sup>103</sup> or mutual understanding,<sup>104</sup> to seek unity,<sup>105</sup> to restore unity between churches,<sup>106</sup> or to heal divisions;<sup>107</sup> sometimes there are special canonical obligations to enter agreements with non-Anglican churches to effect intercommunion.<sup>108</sup> A wide range of canonical devices is used to recognise non-Anglican churches as candidates for ecumenical relations and to explore ecumenical relations (for example through commissions).<sup>109</sup>

In turn, **extrovert law implements ecumenical agreements for communion** between Anglican and non-Anglican churches. Relations between Anglican and non-Anglican churches may be defined in a concordat, an agreement, a covenant, or other instrument setting out the terms of their ecumenical agreement, whether it is of full communion or intercommunion.<sup>110</sup> However, to be operative within the participating Anglican church, these agreements are subsequently incorporated in the law of that church: then the ecumenical agreement or concordat enters the juridical order of the particular Anglican church and acquires a binding character.<sup>111</sup> The canon law of the particular Anglican church implements the practical terms of the communion operating between it and the non-Anglican ecumenical partner. Based on the concordat, canon law defines as rights and duties the meaning of communion for the Anglican church in question; framed as rights and duties, the codified ecumenical agreement enables and orders the sharing of resources. Typically, each church recognises that in

<sup>100</sup> Paradoxically, when all neutral provisions are accumulated, the collective effect is an abundance of shared principles which, in turn, indicate the common fundamental Anglican canon law: see below.

<sup>101</sup> See N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) ch. 11.

<sup>102</sup> Ecumenism is, of course, sometimes treated by resolutions of the Lambeth Conference: see *ibid.*, 355.

<sup>103</sup> South India, Const. II.2.

<sup>104</sup> Jerusalem and the Middle East, Const. Art. 5.

<sup>105</sup> South Africa, Resolution of Permanent Force of the Provincial Synod, 1 (1975).

<sup>106</sup> Korea, Fundamental Declaration of Faith and Rites.

<sup>107</sup> England, canon A 8.

<sup>108</sup> Portugal, canon X.

<sup>109</sup> N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) 356f. Provisions for constitutional union and, increasingly, for Local Ecumenical Projects are features of Anglican laws.

<sup>110</sup> Doe, 360f.

<sup>111</sup> And, of course, the agreement will bind the non-Anglican church when incorporated in its regulatory system. Incidentally, the system is similar to that in the secular sphere of inter-State treaties being incorporated in the municipal law of states which are party to those treaties: see above.

the other the sacraments of baptism and eucharist are duly administered. Each church is obliged to welcome one another's members to receive sacramental and pastoral ministrations and 'to regard baptised members of all [participating churches] as members of our own'. Each church must welcome persons episcopally ordained as bishop, priest or deacon, to serve in the participating churches in accordance with the regulations of the host church. The agreement, as incorporated in an Anglican canonical system, may also impose obligations for future development: for instance, 'to establish appropriate forms of collegial and conciliar consultation on significant matters of faith and order, life and work'; or to coordinate implementation of the agreement.<sup>112</sup> So: from the legal evidence, it would seem that relations between Anglican churches are based on conventional links (of the moral order), whereas those between Anglican and non-Anglican churches are increasingly being based on juridical links—juridical links between Anglicans and non-Anglicans are stronger than those between Anglican churches.<sup>113</sup>

### 3. Canon Law as a Centrifugal Force

Needless to say, there is also evidence of centrifugal law in Anglican churches. Sometimes, the laws of particular churches, dealing explicitly or implicitly with inter-Anglican relations, are antagonistic to or disable global communion. Centrifugal laws push Anglican churches away from each other. First, **the robust canonical expression of autonomy** acts as a centrifugal force.<sup>114</sup> The territorial organisation of a church encourages its own autonomy: churches organise themselves canonically, not in groups, but as separate ecclesiastical entities.<sup>115</sup> Consequently, laws not uncommonly provide: '[i]n explaining the meaning of the standards of faith, teachings, sacraments and Discipline ... and in dealing with all questions on these matters and those of worship, the Church of the Province is not bound by any decisions except those of its own Church Courts provided in this Constitution'.<sup>116</sup> Even the united churches have separate, autonomous juridical identity.<sup>117</sup> Like secular States, Anglican churches have territorial and jurisdictional borders.<sup>118</sup> The idea of **independence**, rather than autonomy, is sometimes asserted in the laws of churches.<sup>119</sup> Indeed, the very existence of canon law is an implicit declaration of a church's autonomy, its power of self-governance.<sup>120</sup> In other words, as a consequence of law, each church institutionalises its own separate identity from other Anglican churches;<sup>121</sup> rather

<sup>112</sup> For implementation of the Porvoo Declaration, for example, see Wales, Canon 28-9-95. It would seem that a concordat of communion between an Anglican church and a non-Anglican church would not also effect communion between that non-Anglican church and other Anglican churches unless and until incorporated in their canonical systems.

<sup>113</sup> The canon in Wales establishing communion between the Church in Wales and, among others, the Spanish Reformed Episcopal Church (a member of the Anglican Communion) is rare: canon 29-9-1966. Also covenants exist between ECUSA and, eg, the Anglican church in Mexico and the Philippines (with regard to mission and resources).

<sup>114</sup> The robust way in which autonomy is expressed in the canon law of a particular church, and the exercise of that autonomy, generate the possibility of separation of that church from both the moral order of the Anglican Communion and from other Anglican churches.

<sup>115</sup> That is, as national, regional, provincial or extra-provincial churches.

<sup>116</sup> Melanesia, Const. Art. 2.

<sup>117</sup> North India, Const. I.IV.4: 'The Church of North India shall be an autonomous Church and free from any control, legal or otherwise, of any Church or Society external to itself'.

<sup>118</sup> For example, deposition of a priest in one Anglican church does not, as a matter of law, bind in another Anglican church: see eg England, the Clerical Disabilities Act 1870.

<sup>119</sup> Korea, Const. Preface: 'in a spirit of self-reliance, self-support and self-sustainment, the Anglican Church of Korea becomes independent and promulgates this new Constitution and Canons'.

<sup>120</sup> Sometimes the concepts of autonomy and belonging to the global communion are juxtaposed: typically, 'the Province is a *fully autonomous part of the Anglican Communion*': South East Asia, Const. Fundamental Declarations, 5.

<sup>121</sup> It is in line, of course, with understandings of the Lambeth Conference about the very nature of Anglican churches: see above.

than law spelling out the part the particular church is to play in the global communion, laws convey a sense of isolation of the particular church.

Secondly, the **exercise of autonomy may result in the conflict of laws**. Sometimes the conflict is actual, sometimes perceived. Examples are well known, and indicate a wide spectrum of apparently conflicting provisions. English church law, which permits the ordination of women as priests, does not authorise the consecration of women as bishops, but under Irish canon law '[m]en and women alike may be ordained to the holy orders ... of priests and bishops'.<sup>122</sup> The law of most churches requires priestly presidency at the eucharist, but some laws authorise lay eucharistic presidency.<sup>123</sup> In the laws of most churches, deposition from holy orders is irreversible, final removal from the clerical state;<sup>124</sup> but other laws enable reversal of deposition.<sup>125</sup> In some churches the law imposes on the diocesan bishop a duty of visitation; in others the bishop has a discretion to visit.<sup>126</sup> In some churches, canon law binds the laity, in others it does not.<sup>127</sup> Obviously, examples such as these might be multiplied.<sup>128</sup> These may be explained as exercises of autonomy, permitted by the global order, but are they really conflicts of law or merely substantive differences, and why is it that some can be lived with and others not?<sup>129</sup>

Thirdly, often **canon law has a divisive effect within a particular church**—canon law creates divisions within churches, or else it fails, for one reason or another, to resolve internal conflict.<sup>130</sup> In turn, the failure of canon law to resolve internal conflict, and the canonical perpetuation of that conflict, reverberates in other Anglican churches; it causes divisions between churches and, ultimately problems for the Anglican Communion itself. Canonical systems manage internal ecclesial conflict in a number of ways. They seek to prevent disagreement about proposed legislative initiatives by elaborate and varied procedural rules governing law-making (especially in the formative stages of the legislative process); such rules are designed to achieve a degree of consensus.<sup>131</sup> As well as schism law in a particular church, all churches have elaborate and varied mechanisms for the resolution of internal conflict.<sup>132</sup> However, sys-

<sup>122</sup> England, Priests (Ordination of Women) Measure 1993, s 1(2): 'Nothing in this Measure shall make it lawful for a woman to be consecrated to the office of bishop': Ireland, Const. IX.22.

<sup>123</sup> Korea, canon 16; compare Australia, Diocese of Sydney, Preaching and Administration of Holy Communion by Lay Persons and Deacons Ordinance 1999.

<sup>124</sup> Nigeria, canon XI(ε): deposition is 'permanent inhibition'.

<sup>125</sup> For reversibility, see eg Wales, canon 19-4-1990, para. 5.

<sup>126</sup> Compare Scotland, canon 6.1 (duty), and Southern Africa, canon 39 (right).

<sup>127</sup> Compare Wales, Const. I.2 and England, *Bishop of Exeter v Marshall* (1868) LR 3 HL 17.

<sup>128</sup> See also Part II.B.1 below.

<sup>129</sup> Once more, the exact relationship between such provisions is often difficult to ascertain. Such apparent dissonances between canonical systems beg the question: when do canonical differences become conflicts of laws? Such provisions are in conflict in the abstract. Real conflict occurs between two inconsistent provisions at the point of application to a particular case. When the opposing rules are in different autonomous systems, there is no real conflict. Conflict arises when they are applied outside their respective systems to a common problem, for example when they are applied in the single system of the moral order of global communion. However, rules are equally valid when they enter the moral order (as they are valid judicially within their respective systems), but their validity may be questioned under the moral order when tested against the Anglican instruments of faith.

<sup>130</sup> J. Setien, 'Tension in the Church', 8(5) *Concilium* (1969) 35.

<sup>131</sup> See N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) ch. 1. Potential disagreement over executive initiatives is often achieved by rules about consultation. But laws of churches do not make express provision for consideration of objections from other Anglican churches to legislative or executive initiatives within them.

<sup>132</sup> They range from the exercise of systems of administrative hierarchical recourse (when it is sometimes claimed that canonical discretions are misused), to visitatorial powers, to quasi-judicial appeal systems, and, as a last resort, to full judicial determination in tribunals and courts: Doe, ch .3.

tems are less well-developed in their management of conscientious dissent by minorities following legislative or executive initiatives within a particular church; provision of alternative episcopal oversight is a recent innovation to manage this.<sup>133</sup> The use of conscience clauses in church law is not a common feature of canonical systems. Fourthly, the lack of developed inter-Anglican law within individual systems leads to the greater likelihood of conflict. Finally, conflict within churches, arising from objection to internal ecclesiastical legislative, executive or judicial action, may cause litigation in the courts of the State,<sup>134</sup> which in turn may give rise to issues of freedom of religion under civil law.<sup>135</sup>

## B. The Role of Anglican Canon Law and Canonical Tradition

As well as individual canonical systems, a critical part is played in the definition and maintenance of unity in the Anglican Communion by fundamental common Anglican canon law and by the canonical tradition in which individual churches directly, sometimes consciously and sometimes unconsciously, participate.

### 1. Fundamental Anglican Canon Law: The Anglican Common Law

There is, of course, no explicit formal *corpus* of binding canon law globally applicable to all churches in the Anglican Communion. But by implication fundamental Anglican canon law exists as an abstract, objective reality. Its basic principles can be induced from the factual coincidences of actual laws of each particular Anglican church,<sup>136</sup> and this process of induction indicates what may be styled the Anglican common law.<sup>137</sup> The construction of the principles of the common Anglican canon law is a scientific task, based on the extraction of common provisions shared by churches in the Communion. Indeed, these coincidences, and the principles which flow from them, indicate well, even define, the nature of the Anglican Communion itself: individual canonical systems, and the common law derived from them, represent a concrete expression of the very character of Anglicanism and Anglican polity. The collective effect of similarities between individual canonical systems is fundamental Anglican canon law, the *ius commune* of the Anglican Communion,<sup>138</sup> its living, unwritten common law. Differences, and arguably conflicts, between the details of canonical systems are predominantly in the nature of conditions under

<sup>133</sup> In England and Wales, provision exists for alternative episcopal oversight for opponents to women priests; for eg England, see Act of Synod 1994.

<sup>134</sup> For England, over the legislation concerning the ordination of women as priests, see eg *R v Ecclesiastical Committee of Both Houses of Parliament, ex parte The Church Society* (1994) 6 Admin LR 670, CA. For other examples, see generally N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) xix–xxv: many of these cases originated in disputes arising from the effects and application of church law.

<sup>135</sup> In short, excessively robust, weak or unclear canon law frustrates and even marginalises those who consider their rights as neither respected nor protected. Discriminatory and inflexible canon law marginalises minorities within churches. Canonical powers may be abused or misused. Canon law institutionalises tensions within churches. But canon law can also be remedial—it can mend divisions by a sensitive distribution and enforcement of rights and duties. Provisions in laws which forbid discrimination (eg on grounds of race) may represent best practice: see eg Tanzania, Const. II.5, or ECUSA, Cans. I.17.5.

<sup>136</sup> P.H.E. Thomas, 'Some Principles of Anglican Authority' in *Four Documents on Authority in the Anglican Communion* from the Anglican Primates' Meeting, Washington, DC, 1981, 18. In an introductory survey of constitutions, the author was 'impressed by the measure of agreement and the flexibility of faith which they display. It seems to me that a comparative study of this material could reveal a distinct pattern of authority and thereby encourage a clearer understanding of Anglican self-consciousness today'.

<sup>137</sup> In the common law tradition, of course, classically the unwritten common law is induced from judicial decisions, among other sources.

<sup>138</sup> The idea is an old one for Anglicans: see eg R. Helmholz, 'Richard Hooker and the European *Ius Commune*', 6 *Ecc L J* (2001) 4.

which shared principles are applied; the principles are shared, differences exist with regard to their detailed application in each church.<sup>139</sup> From the juridical evidence in each church, it is possible to state the principles of the common Anglican canon law:<sup>140</sup> some facilitate, others order and limit; most are familiar, and many self-evident; what is striking is the depth of these principles.<sup>141</sup>

For example (the following is not exhaustive), in relation to **ecclesiastical government**, in which churches share a high degree of legal unity in their institutional organisation: final competence to legislate for a church rests with its central legislative assembly representative of the bishops, clergy and laity; special procedures must be followed for the amendment of constitutions;<sup>142</sup> churches are episcopally led and synodically governed;<sup>143</sup> governance must be according to law;<sup>144</sup> disciplinary processes must give rights to be heard, to representation, and to appeal.<sup>145</sup> Principles of **ministry** include: ordained ministry is exercised by the threefold ministry of bishops, priests and deacons; diocesan bishops should be elected; bishops should exercise general oversight of the governing, teaching and liturgical life of a diocese; removal of bishops is for the collective action of bishops in an individual church; ordination must be episcopal; the right to determine suitability for ordination ultimately belongs to the bishop; clerical ministry must be authorised by the diocesan bishop; clergy owe a duty of canonical obedience to the bishop.<sup>146</sup> With **doctrine and liturgy**: the sources of doctrine are Scripture, the creeds, the dominical sacraments; clergy must assent to canonical doctrines; liturgy must be in accordance with the doctrine of the church; liturgical life must be characterised by flexibility.<sup>147</sup> Principles applicable to **rites** include: no minister should refuse baptism of infants; marriage is effected by the exchange of consents; exclusion from holy communion ultimately belongs to the bishop; the seal of the confessional is inviolable.<sup>148</sup> These, and other principles applicable to **church property**, even down to the principle that ecclesiastical registers must be kept,<sup>149</sup> might be multiplied. Equally, though, the juridical evidence suggests which principles are not part of Anglican canon law: often there is insufficient juridical evidence to suggest a general principle.<sup>150</sup>

<sup>139</sup> For the difficulties of induction and the formulation of its general principles, see N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) 374–375. Sometimes there is unanimity, sometimes a majoritarian approach has to be used to induce a principle, sometimes principles are induced from the silence of laws.

<sup>140</sup> Whether a proposition is a common principle may be established by reversing that proposition and asking whether the reversed form is part of Anglican polity; for example, the unacceptability of the proposition that ‘diocesan bishops should NOT be elected’, would suggest that the proposition ‘diocesan bishops should be elected’ is a principle of Anglican common law.

<sup>141</sup> Some are clearly fundamental, whilst others relate to the detail of church life.

<sup>142</sup> It is only in the conditions under which law-making power may be exercised, and the composition of legislatures, that diversity is found: see Doe, chs. 1 and 2.

<sup>143</sup> Bishops, clergy and laity collectively possess the power of governance; compare the Roman Catholic Code of Canon Law (1983) canon 129; only clergy possess the power of governance.

<sup>144</sup> Legislative, executive, quasi-judicial and judicial powers, including episcopal powers, must be exercised in accordance with law; the rule of law is a fundamental of all legal systems, civil and ecclesiastical.

<sup>145</sup> See Doe, ch. 3: this is something shared, of course, with secular legal systems.

<sup>146</sup> Doe, chs. 4, 5 and 6.

<sup>147</sup> Doe, chs. 7 and 8.

<sup>148</sup> Doe, chs. 9 and 10.

<sup>149</sup> Doe, ch. 11: churches are united in that oversight of property belongs to the central church assembly, but that ownership and management at the lower levels of the church are vested in local ecclesiastical authorities, and that church buildings cannot be used for profane purposes.

<sup>150</sup> It is not a general principle that: episcopal visitation is a duty (in some churches it is, in others it is discretionary); courts have jurisdiction over the laity (in some they do, in others they do not); decisions of church courts are creative of law (in a small minority they are); the rights and duties of the laity must be defined (in a small number of churches they are); the laity must assent to the canonical doctrines.



## 2. The Canon Law Tradition: Challenge and Principles

Another phenomenon which must be considered is that of the canonical tradition: this too links Anglican churches to each other and to the global Anglican Communion. The canonical tradition also links Anglican churches to other ecclesial communions of the catholic and apostolic tradition. All these churches live out, in their juridical orders, the canonical tradition and its principles. The basic idea is that canon law is a generic phenomenon enjoying an existence independent of the canonical systems of particular communions and particular churches. In this respect, we might speak of the same principles of canon law applicable to the Roman Catholic Church, the Eastern Catholic Churches, the Orthodox Churches, and the churches of the Anglican Communion. In turn, the principles of the generic canon law are merely particularised in individual canonical systems. By way of analogy, canon law is postulated as an entity in the same way as civil law or common law, each particularised in a single civil law system or a common law system of an individual secular State.<sup>151</sup>

The laws of several churches recognise formally the existence of this overarching canon law. The Roman Catholic Code of Canon Law (1983) states: 'if an express prescription of universal or particular law or a custom is lacking in some particular matter, the case is to be decided in the light of [*inter alia*] ... the general principles of law observed with canonical equity'.<sup>152</sup> The 1990 Code of the Eastern Catholic Churches provides that, when the law is silent, 'the case is to be decided in the light of ... the general principles of canon law observed with equity'.<sup>153</sup> The law of the Anglican church in Southern Africa, for example, states: 'if any question should arise as to the interpretation of the Canons or Laws of this Church, or any part thereof, the interpretation shall be governed by the general principles of Canon Law thereto applicable'.<sup>154</sup> Moreover, in some Anglican churches, the law makes express provision for the continuing authority and binding effect of pre-Reformation canon law and its principles; in others, the law does not.<sup>155</sup>

Whether they are conscious of the fact or not, Anglican churches participate in, or belong to, the canon law tradition by perpetuating it through their own canonical systems. The principles of the canonical tradition are foundational, expressing the fundamental values, sometimes with a high degree of generality, of the church and its juridical order. Canonical principles, many of which are shared with the civil law and common law traditions, both facilitative and ordering, and often having a distinct theological content, include: the salvation of souls is the supreme law;<sup>156</sup> laws ought to conform to divine law;<sup>157</sup> in the exercise of rights all the faithful must take into account the common good of the church and the rights of others and their duties towards others;<sup>158</sup> laws must be applied with canonical equity;<sup>159</sup> later laws abrogate

<sup>151</sup> See eg R.E. Rodes, 'The Canon Law as a Legal System—Function, Obligation and Sanction', *Natural Law Forum* (1962) 45.

<sup>152</sup> Roman Catholic Code of Canon Law (1983), canon 19.

<sup>153</sup> Eastern Catholic Churches (1990), canon 1501.

<sup>154</sup> Southern Africa, canon 50.

<sup>155</sup> England, Submission of the Clergy Act 1534; Wales, Const. IX.36; compare Australia, canon 11 1992, 3(1): 'all canon law of the Church of England made prior to the Canons of 1603 ... shall have no operation or effect in a diocese' however, 4: this lists the canons of 1603 which have no effect in a diocese but a right is reserved to a diocese to adopt them.

<sup>156</sup> Roman Catholic Code of Canon Law (1983), canon 1752.

<sup>157</sup> See above.

<sup>158</sup> See eg Roman Catholic Code of Canon Law (1983), canon 223, para 1.

<sup>159</sup> ECUSA, canons I.17.6; North India, Const. II.V.6; Roman Catholic Code of Canon Law (1983), canon 19. See generally J.J. Coughlin, 'Canonical Equity', 30 *Studia Canonica* (1996) 405.

earlier laws, and custom is the best interpreter of law;<sup>160</sup> no-one can be obliged to do the impossible;<sup>161</sup> and judicial decisions interpret law, they do not create it.<sup>162</sup> Currently, work is being done by Anglican and Roman Catholic canon lawyers on the elucidation of the principles of canon law, their nature, terms, origin, authority and location,<sup>163</sup> and their role in ecumenical dialogue.<sup>164</sup>

### PART III

#### CANON LAW AND THE DEVELOPMENT OF COMMUNION

This final part offers a general assessment of the relationship between the canon laws of particular Anglican churches, whether they contribute fruitfully to or hinder inter-church relations in the Anglican Communion, and the ways in which they might be improved both to develop further the concept of communion as a meaningful juridical reality for all particular churches, and to reduce the potential for recurrent inter-church conflict.

##### 1. The Canonical Contribution to Global Communion: Assessment

An obvious way to assess, in a preliminary fashion, the canonical profile of global communion in the legal systems of individual Anglican churches is to understand, from the evidence, the strengths and weakness of the canonical contribution to global communion. On balance, the existence of weaknesses would seem to suggest that centripetal law is not sufficiently developed to protect global communion and to effect responsibility in the exercise of autonomy.

##### (1) Strengths of the Canonical Contribution:

(i) An examination of the coincidences between individual canonical systems discloses a high degree of juridical similarity and unity amongst churches of the Anglican Communion. Individual canonical systems, and the shared principles extracted from them forming the Anglican common law, are a concrete expression of the very character of Anglicanism. The collective effect of the similarities between individual canonical systems is a major contribution both to Anglican identity and to cohesion in the Communion.

(ii) An examination of the purposes of canon law, in its wide sense, indicates that each church shares in the inherited canonical tradition: they particularise the generic canon law to their own circumstances; this is a real contribution to global unity.

(iii) There is evidence that global communion is a juridical reality for many churches in certain areas of their life: it is part of the Anglican experience that canon law is a centripetal force for some churches as it focuses the mind of the church on the effects of its activities for external inter-church relations. Best practice is found in communion law of individual churches which shapes their activities.

(iv) There is evidence that canon laws seek to effect freedom for each autonomous church and at the same time impose restraints on the exercise of their autonomy.

<sup>160</sup> Roman Catholic Code of Canon Law (1983), canon 27.<sup>161</sup> *Liber Sextus*, 6, and Roman Catholic Code of Canon Law (1983), canon 1095 3.

<sup>162</sup> Roman Catholic Code of Canon Law (1983), canon 16. In most Anglican churches, the formal law does not specify that judicial decisions create law (England is a notable exception).

<sup>163</sup> See eg N. Doe, 'The Principles of Canon Law: A Focus of Legal Unity in Anglican-Roman Catholic relations', 5 *Ecc LJ* (1999) 221.

<sup>164</sup> For the work of the Colloquium of Anglican and Roman Catholic Canon Lawyers, set up in Rome in 1999, see M. Hill, 'Colloquium of Anglican and Roman Catholic Canon Lawyers', 6 *Ecc LJ* (2000) 61.

(v) The ecumenical experience of defining communion between Anglican and non-Anglican churches, and its implementation in individual canonical systems, affords a good working model for possible developments within the Anglican Communion concerning inter-Anglican relations; the ecumenical experience of concordats is perhaps the best indication of the possible shape of extrovert canon law for Anglican churches.<sup>165</sup>

(2) Weaknesses of the Canonical Contribution:

(i) The distribution of centripetal law amongst churches is characterised by a lack of consistency: some churches have extrovert Anglican Communion law, others do not; one church has it in one area of its life, and another church in a different area; some require consultation on prescribed subjects with the See of Canterbury or the Primate, some with the Anglican Consultative Council, and some not at all. No church has a systematic and comprehensive body of communion law dedicated exclusively to its *place and role in the Anglican Communion, and the implications of these for the life of that individual church.*

(ii) Centripetal laws often lack precision and prescription: in some churches such laws are expressed prescriptively, and in others descriptively, though descriptive laws could readily be re-cast as prescriptive; in their church identity laws, no church defines with any precision the exact terms of its communion with the See of Canterbury and with other Anglican churches.

(iii) Centripetal law is often characterised by a lack of clarity: provisions are too general or too vague, and others underdeveloped, and there may be questions sometimes about their effectiveness and enforcement in particular churches.

(iv) The principles of the moral order, governing inter-Anglican relations and the limits of autonomy, are not obviously and consistently incorporated in the juridical orders of individual churches. There is a lack of effectiveness, and a lack of enforcement, which could be cured by the translation of the moral order into the local juridical order.

(v) As canon law may cause division within a particular church, so centrifugal canon laws contribute to global divisions, disagreement and conflict between Anglican churches. No church has developed law to provide for the specific problem of the resolution of inter-Anglican conflict, nor to allow other Anglican churches a voice in important legislative (and executive) initiatives within that church.

## 2. The Potential of Canon Law for the Development of Communion

The canon law of each church has potential to develop communion because: it is a means to an end, the servant of the church; it exists to effect facility and order; it is binding and enforceable within the individual church; it already contains the materials and examples of best practice necessary to enhance global communion; it can be expressed with clarity and precision; and its use is a normal human function, not a last resort.<sup>166</sup> The development of canon law, to enhance communion, would be consistent with the principle of autonomy. The juridical reality is that practical

<sup>165</sup> If Anglican churches can do this with non-Anglican churches, why cannot Anglican churches enter concordats with all other Anglican churches, and implement them in their own laws?

<sup>166</sup> For example, the incorporation in the laws of all churches of a simple rule that a bishop in one church cannot minister in another church without the consent of the appropriate authority of the host church might have prevented the current Singapore-ECUSA problem.

authority lies with the individual church and its institutions. Enhancement of communion through canonical development would ensure that ownership of communion rests with individual churches: they would be responsible for its enhancement. In the ecumenical context, juridical enhancement of communion would also be an expression of the participation of Anglican churches in the canonical tradition shared with other ecclesial communions.<sup>167</sup>

The option of canonical development would be in line with the recommendation of the Virginia Report which urged study of Anglican polity to address the hard questions of collective discipline at the global level of the Anglican Communion.<sup>168</sup> Moreover, of course, the Lambeth Conference in 1998 requested the Primates 'to initiate and monitor a decade of study in each province on the [Virginia] report, and in particular "whether effective communion, at all levels, does not require appropriate instruments, with due safeguards, not only for legislation, but also for oversight" as well as on the issue of a universal ministry in the service of Christian unity'.<sup>169</sup> The Conference also decided that the Primates Meeting 'include among its responsibilities positive encouragement to ... intervention in cases of exceptional emergency which are incapable of internal resolution within provinces, and giving of guidelines on the limits of Anglican diversity in submission to the sovereign authority of Holy Scripture and in loyalty to our Anglican tradition and formularies'. Exploration of the canonical option would be a way to move these recommendations forward.<sup>170</sup>

The potential of the canon law of individual churches as a resource could be developed in a number of ways to contribute more to or enhance global communion. Critically, canonical development could translate the imperatives of the moral order into the juridical order of individual churches. Translation of the moral order to the juridical, by strengthening centripetal laws, would mean working with the juridical reality that authority lies with the legislators and other authorities of particular churches. As a result, global communion would become a juridical reality for each particular church. The canonical option would provide discipline at the level that matters: the particular church. If global communion and compliance with the principles of the moral order are to be taken seriously, converting these into law in each church, would mean that they would become enforceable: the use of law would promote compliance in a concrete way; it is axiomatic that response at a juridical level is stronger than that at a moral level. Canonical revision, the development of communion law in each church, might achieve this. Needless to say, this is a long-term solution, to prevent occurrence of internal and inter-church conflict, and to provide a mechanism for resolution of conflict were it to recur. A long-term canonical option would provide both facility and order for the particular church and for inter-Anglican relations. One obvious model for such a development is the existing laws of some Anglican churches on ecumenical concordats and their incorporation in canon law: this is a practical experience of translating the moral order of communion, defined in an ecumenical concordat, into the juridical order of particular churches.

<sup>167</sup> Eg *Communion in Mission* (2000), issued by a meeting of Anglican and Roman Catholic bishops, highlights differences concerning 'the understanding of authority in the church, including the way it is exercised': the proposal outlined below may be in line with the call, in this joint document, for 'translating the degree of spiritual communion that has been achieved into visible and practical outcomes'.

<sup>168</sup> See *The Official Report of the Lambeth Conference 1998* (Pennsylvania, 1999) 15.

<sup>169</sup> LC 1998, Res. III.8; Virginia Report, 5.20.

<sup>170</sup> ACC—1979, 6 Ontario: these Guidelines for Provincial Constitutions suggest that, *inter alia*, constitutions should include criteria by which a province 'may be validly accepted or remain part' of the Anglican Communion, relationships with other provinces of the Communion, and relationships between the province and other churches or communions. The guidelines deal with subjects which should be regulated by a constitution.

### 3. Practical Realisation of the Canonical Potential

A process of canonical development, to lead to fulfilment of the canonical potential, could be an initiative of the Primates Meeting and might entail the following steps:

**(1) Acknowledgement:** The Primates Meeting might begin the process with a statement acknowledging simply the living reality of the *ius commune* of the Anglican Communion, the unwritten common law based on the profound similarities of individual Anglican legal systems and their belonging to the canonical tradition.<sup>171</sup> Primates would then take this statement back to their own churches.<sup>172</sup>

**(2) Examination:** The Primates Meeting might then institute an examination of: (a) individual canonical systems to identify more precisely the extent of centripetal/extrovert, neutral/introvert, and centrifugal/divisive law, the principles of the Anglican common law (particularly as they relate to inter-Anglican relations), and of the canonical tradition; (b) the anatomy of inter-church conflict, in the context of the global moral and local juridical orders; (c) existing models (ecclesiastical<sup>173</sup> and secular<sup>174</sup>) to identify practical ways in which other institutions make shared values more evident, and reconcile the concepts of community and autonomy, including systems for the resolution of conflict, and ways in which these might be adapted to the Anglican context.

**(3) Recommendation and Consideration:** As a result of examination: (a) a recommendation might be made to the Primates Meeting, to develop canonical systems in order to strengthen centripetal law and weaken centrifugal law; (b) the recommendation would contain concrete proposals for individual churches to develop their own canon law to increase the profile of communion, to define their inter-church relations, and for the resolution of inter-Anglican conflict; (c) a draft statement of common Anglican canon law and polity would set out precisely these recommenda-

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<sup>171</sup> For example: 'The Primates wish to affirm the place of Canon Law as one of the many elements of shared life which bind the Churches of the Anglican Communion together, and the importance of the *ius commune* as a common inheritance which unites the lives of the different Provinces into a corporate discipline. They invite the Provinces of the Anglican Communion to look again at the way in which the Canon Law draws the lives of the different Provinces into a shared experience of Christian discipleship and discipline. They look for a renewal of the Canon Law which will encourage and maintain the mutual respect and fellowship of the Churches of the Anglican Communion, whilst marking the boundaries of an authentically Anglican and yet faithful interpretation of the Gospel'.

<sup>172</sup> Each Primate could commend that the central legislature of the particular church acknowledges the existence of the common law of the Anglican Communion and undertakes to have regard to and respect it. This would be a short-term measure, and could be achieved in churches by the introduction of a single clause in their law to this effect. For example, a typical clause might state: 'The Constitution and Canon Law of the Anglican Church of X shall be interpreted at all times in the context of the *ius commune* received in common by the Churches of the Anglican Communion, and any decision made under and concerning the meaning and application of the Constitution and Canon Law shall have due regard to principles embodied in the *ius commune*'. I am grateful to the Revd Gregory Cameron for these suggestions.

<sup>173</sup> These might include a study of Anglican, Lutheran, Roman Catholic, Eastern Catholic, and Orthodox models, in which the reconciliation of the demands of particular churches and those of the universal church is a persistent theme.

<sup>174</sup> Such as the treatment of inter-state relations and conflict in public international law, and the structure of international treaties (the UN Declaration of Human Rights, the European Convention on Human Rights, or the European Charter of Fundamental Rights, and the ways in which these are incorporated in the municipal law of States).

tions;<sup>175</sup> (d) the Primates Meeting would consider the statement (in consultation with the ACC), and issue it in the form of a draft concordat for incorporation by individual churches within their own canonical systems.

**(4) Consultation:** This could involve circulation of the examination, recommendation and draft statement and concordat to all individual churches in the Anglican Communion, for consultation with their central church legislatures.<sup>176</sup>

**(5) Declaration and Adoption:** The Primates Meeting would consider and where appropriate adopt the results of consultation. A **Statement or Declaration of Common Anglican Canon Law and Polity** would be issued by the Archbishop of Canterbury in partnership with the Primates Meeting, in the form of a concordat: all Primates would be signatories. The statement would not of itself be law, issuing as it would from the global moral order, but rather would set out the programme for canonical revision in each church.

**(6) Education:** This would involve the primates and bishops, with feedback to the 2008 Lambeth Conference, and its aim would be to stimulate reflection by the legislatures of individual churches on the need for implementation of the terms of the Declaration.

**(7) Implementation and Incorporation:** Individual churches, perhaps in groups by means of covenants (with a lead from the Church of England), would begin work on incorporation of the Declaration into their canonical systems by means of canonical revision. Each church would have a body of distinctly Communion Law.

**(8) Periodic Review:** The Declaration could be subject to periodic review and development by the Primates Meeting and individual churches could review periodically both the incorporation and the administration of their communion laws, perhaps with reports to the Primates Meeting.

## CONCLUSION

1. In the context of order and discipline, through living out the faith, Anglicans have two experiences: the juridical experience of the legal system of their own particular church; and the moral experience of the global Anglican Communion. At the local ecclesial level, canon law, in its wide sense, is the servant of each Anglican church: it seeks to facilitate and order communion amongst the faithful within each particular church. At the global level, principles about communion, autonomy (and its exercise), and about inter-church relations, have only moral authority for individual churches; they do not bind churches juridically unless incorporated in their legal systems. Yet, the canon law of each Anglican church should also be a true reflection of

<sup>175</sup> The statement would be of the common law of the Anglican Communion (not the whole of it but those elements which deal with inter-Anglican relations); the document (like an ecumenical concordat) would of itself have no direct force within particular churches (coming as it would from an institution with moral authority) unless and until incorporated in their legal systems: its terms would reflect the episcopal, pastoral, eucharistic and ecumenical nature of canon law, as well (perhaps) as the notion of the conscience of a church; the principles would be in the form of general norms and permissible exceptions—in short, a definition of freedom and self-restraint, based on the current principles of Anglican canon law induced from the coincidences shared by existing canonical systems. Part I might deal with a definition of Communion and of membership; Part II with the principles of Anglican polity and inter-church relations; and Part III with the resolution of inter-church conflict.

<sup>176</sup> The Primates would be best placed to stimulate reception and incorporation as they commonly have a jurisdiction of leadership, and the right to initiate new legislation, under the existing laws of their own churches.

global communion between Anglican churches. However, at present individual canonical systems are ambivalent to global communion—sometimes laws pull churches together, sometimes they push churches away from each other, but mostly they are introvert or neutral, indifferent to global communion. Inter-Anglican relations are not a distinctive feature of canon laws. Nevertheless, from the extensive similarities between individual canonical systems there are many shared principles of Anglican canon law—there is a common law of the Anglican Communion, induced from what individual canonical systems share—and each church belongs to a rich canonical tradition.

2. The potential of canon law to enhance global communion, to make it a binding reality in each church, is considerable. Indeed, the ecumenical experience of concordats, defining relations and communion between Anglican and non-Anglican churches and implementing these in the laws of participating churches, could function as a useful model to realise this potential. Application of this model to inter-Anglican relations would translate meaningfully the moral order of the global principles of inter-church communion into the binding juridical order of each church, by means of incorporation in their legal systems.

3. In the short term, acknowledgement by the Primates Meeting of the existence of the common law of the Anglican Communion would represent a major contribution to an understanding of shared juridical experiences of individual churches. In the longer term, a statement or declaration of the principles of Anglican canon law (rooted in theology and based on the best practice of churches, the Anglican common law, and the canonical tradition) by the Primates Meeting in the form of an inter-Anglican concordat, would define inter-Anglican relations and the meaning of communion. With this lead, and its promotion of canonical values, it would then be the responsibility of each particular church to enhance global communion by implementing the statement in its own legal system in the formation of distinctly communion law. Subsequent incorporation of these principles into individual canonical systems would convert the existing moral force of inter-Anglican communion into a binding reality for each particular Anglican church. Incorporation of the inter-Anglican concordat into actual canon laws, by means of canonical revision in each church, would be a long-term solution both to enhance global communion, at the binding juridical level of each church, and to reduce likelihood of the occurrence of inter-Anglican conflict.