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## A Decade of Ecumenical Dialogue on Canon Law

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# A Decade of Ecumenical Dialogue on Canon Law

A REPORT ON THE PROCEEDINGS OF THE COLLOQUIUM OF ANGLICAN AND  
ROMAN CATHOLIC CANON LAWYERS 1999–2009<sup>1</sup>

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## INTRODUCTION

In the decades that followed the close of the Second Vatican Council, great progress was made in the dialogue between the Anglican Communion and the Roman Catholic Church.<sup>2</sup> During that period, the Anglican–Roman Catholic International Commission (ARCIC) was founded in 1967 by Pope Paul VI and the Archbishop of Canterbury (Michael Ramsey). The rich and common heritage shared by Anglicans and Roman Catholics found expression in the work and statements of ARCIC.<sup>3</sup> In the background was the work of theologians, historians, liturgists and Scripture scholars, and many relationships were being cultivated locally in dioceses and parishes around the world. While the possible significance of Church law had been recognised in the 1974 World Council of Churches Report, *Christian Unity and Church Law*, there has been no sustained discussion of canon law in the work of ARCIC.

In the Roman Catholic Church, the Code of Canon Law was being revised – its revision having been announced by Pope John XXIII at the same time as he announced the Vatican Council. Relations between the Roman Catholic Church

- 1 Membership of the Colloquium and participation in its deliberations has varied over the decade during which it has been in existence. This Report was the product of the 2009 Colloquium, at which the Anglican participants were Norman Doe, Mark Hill, Anthony Jeremy, Gregory Cameron (in absentia) and Stephen Slack. Those from the Roman Catholic church comprised James Conn, Aidan McGrath, Robert Ombres, Michael Hilbert and Fintan Gavin. Gareth Powell was present as a Methodist observer. The drafting of the Report was undertaken by all of the members of the 2009 Colloquium and the agreed text is offered for ecumenical reflection and wider discussion.
- 2 In this document, the term ‘Anglican’ is used to refer to one of the constituent Churches of the Anglican Communion, while ‘Roman Catholic’ or ‘Catholic’ is used to refer to the Catholic Church in communion with the See of Rome. For the sake of brevity, sometimes the terms ‘two Churches’ and ‘two Communion’ are used. In doing so, no theological position is being adopted.
- 3 See eg ‘Eucharist doctrine’ (1971), ‘Elucidations on the Eucharist’ (1979), ‘Ministry and ordination’ (1973), ‘Elucidations on ministry and ordination’ (1979), ‘Authority in the Church I and II’ (1976 and 1981), ‘Salvation and the Church’ (1986), ‘The Church as Communion’ (1991), ‘Life in Christ: morals, Communion and the Church’ (1993), ‘The gift of authority’ (1999), and ‘Mary: grace and hope in Christ’ (2005).

and other Churches were regulated by means of the 1967 Ecumenical Directory and subsequent documents.<sup>4</sup> These documents indicated when and in what circumstances co-operation, common prayer and even shared worship might take place. While they were an advance on the attitude that had prevailed in the decades (and centuries) before Vatican II, they tended to emphasise the difference between the Roman Catholic Church and other Churches not in full communion.

The promulgation of the 1983 Code of Canon Law and the subsequent 1993 *Ecumenical Directory* addressed some of the issues not covered by previous interventions, but the norms they contained still tended to set limits to what might be done. In none of these documents is there any mention of the possibility of using Canon Law as an instrument to further the dialogue between the Roman Catholic Church and others.

In the mid-1990s, however, approaches were made by the Ecclesiastical Law Society to the Canon Law Society of Great Britain and Ireland seeking some form of collaboration in their study and interest in matters canonical. These conversations resulted in the establishment in 1998 of a lecture to commemorate William Lyndwood, perhaps the greatest pre-Reformation English canonist, a man whose work is revered by both Anglicans and Roman Catholics. This lecture now takes place every two years and is hosted alternately by the Ecclesiastical Law Society and the Canon Law Society of Great Britain and Ireland.

Meanwhile, within Anglicanism, throughout the 1990s there was a small but significant resurgence in interest in the study of canon law. In 1991, the Law School at Cardiff University introduced an LLM in Canon Law, the first degree of its type in a British university since the Reformation. The academic work of Professor Norman Doe was a major catalyst throughout this period (as it continues to be today) in reawakening awareness of the Anglican canonical inheritance and its application in our time.<sup>5</sup> This evolved further with the setting up in 1998 of the Centre for Law and Religion at Cardiff University – again, the first such centre in the United Kingdom.

On a broader canvas, there has been a growing consciousness within Anglicanism of what has been styled by some the Anglican *Ius Commune*, which was presented and discussed at a meeting of the Primates in Kanuga, North Carolina, USA in 2001. The following year, a consultation of Anglican legal advisers debated this theory and experience, and subsequently the Primates discussed the report of that consultation, and assigned canon law

4 Secretariat for the Promotion of Christian Unity, *Ecumenical Directory 1967*, published in English in A Flannery (ed), *Vatican Council II: the Conciliar and post-Conciliar documents* (Dublin, 1975), pp 483–501; subsequent documents were also published in English in Flannery, pp 502–507, 554–559, 560–563. The *Ecumenical Directory* was revised and published in 1993 by the Pontifical Council for the Promotion of Christian Unity.

5 See eg N Doe, *Canon Law in the Anglican Communion* (Oxford, 1998).

a place as a fifth instrument of unity<sup>6</sup> within Anglicanism: ‘The Primates recognized that the unwritten law common to the Churches of the Communion and expressed as shared principles of canon law may be understood to constitute a fifth “instrument of unity”.’

Later that same year, the Anglican Consultative Council unanimously accepted a proposal to establish an Anglican Communion Legal Advisers’ Network, which would, inter alia, ‘produce a statement of principles of Canon Law common within the Communion’. As a result of controversy and debate within the Anglican Communion, there has been renewed focus since 2003 on the concept of Canon Law. The Windsor Continuation Group and the Anglican Covenant Design Group have been examining the possibility of strengthening the bonds of affection within Anglicanism by means of a covenant, which would be founded not only on theological principles but also on canon law. In 2008, the Anglican Communion Legal Advisers’ Network presented their work at the Lambeth Conference: *The Principles of Canon Law Common to the Churches of the Anglican Communion*. This development should be acknowledged as a major innovation in the life of the Anglican Communion.

In 1998, some Anglican canonists on a visit to Rome met up with some canonists from the Faculty of Canon Law of the Pontifical University of St Thomas (Angelicum). In the course of conversation, it was decided to establish a colloquium in which Anglican and Roman Catholic canon lawyers could present for discussion their own positions on a variety of subjects. With the backing of the Canon Law Faculty of the Angelicum and the Centre for Law and Religion at Cardiff University, the first Colloquium took place in 1999 in Rome.

In the ten years that followed, the Colloquium has met in different places and considered the following subjects: church property law (Angelicum, Rome, 1999), clerical discipline (St George’s House, Windsor, 2000), initiation into the Church (Angelicum, 2002), authority in the Church (Cardiff and St David’s, Wales, 2003), ecumenical co-operation (London, 2004), Orders and primacy (Pontifical Gregorian University, Rome, 2005; Johannesburg, 2006), preparation for ministry (Gregorian, Rome, 2007) and marriage (Sliema, Malta, 2008).<sup>7</sup> Some of the original participants are no longer able to be involved and they have been replaced as time has gone by.<sup>8</sup>

These encounters have always been marked by academic rigour, candid exchanges of views, respectful listening, fellowship and shared worship. It has

6 The other four being: the Archbishop of Canterbury, the Lambeth Conference, the Primates’ Meeting and the Anglican Consultative Council. See ‘Report of the Meeting of the Primates of the Anglican Communion, Canterbury, 10–17 April 2002’, para 6, available at <<http://www.anglicancommunion.org/acns/news.cfm/2002/4/17/ACNS2959>>, accessed 16 June 2009.

7 A report on each of these proceedings may be found, respectively at: (1999) 5 Ecc LJ 281, (2001) 6 Ecc LJ 61, (2002) 6 Ecc LJ 403, (2003) 7 Ecc LJ 225, (2005) 8 Ecc LJ 99, (2006) 8 Ecc LJ 358, (2006) 8 Ecc LJ 484, (2007) 9 Ecc LJ 321, (2008) 10 Ecc LJ 357.

8 A complete list of all participants is available from Professor Norman Doe at Cardiff University.

been more than interesting to observe in the work of the participants what Anglicans and Roman Catholics have in common, what they do not share and what is simply done in another way. Behind the conversations on matters canonical, there has always been a deep respect for the doctrine that often lies behind the legislation considered and for the sensitivities of each participant towards certain very delicate matters.

The methodology of the Colloquium has been to pair canonists from the two traditions to write parallel papers on a given topic, which are circulated before the meeting to form the basis of extended discussion and debate. From this, convergences of law have been identified, differences noted and sets of shared principles developed.

The Tenth Colloquium met in Rome from 1–4 March 2009. This document constitutes a synthetic reflection by the participants of the work of the Colloquium over ten years. It may not have occurred to anyone five decades ago that canon law was a field in which ecumenical dialogue might fruitfully take place. But that is precisely what those involved in the Colloquium since 1999 have experienced.

The publication of the Acts of the various meetings has been well received. A more immediate effect is that the actual experience of participating in the Colloquium has led to the emergence of a deep, respectful bond of fellowship and friendship between the participants. This has enabled them to exchange views, sometimes forcefully and with enthusiasm, but never with offence. Instead of being considered only as an instrument that places limits on ecumenical endeavours, canon law is now being seen as a means to deepen the continuing dialogue.

## THE NATURE AND PURPOSES OF CANON LAW<sup>9</sup>

### The sources and forms of law

At international level, the Anglican Communion has no formal body of law applicable globally to its 44 churches in communion with the See of Canterbury; each church is autonomous, with its own legal system. The Communion is held together by ‘bonds of affection’ – shared loyalty to Scripture, creeds, baptism, Eucharist, historic episcopate – and its institutional

9 This contribution is based on a very great volume of legal evidence, but to favour accessibility we have kept references to a minimum. The following works, however, are essential. For the Anglican material: N Doe, *Canon Law in the Anglican Communion* (Oxford, 1998); N Doe, ‘The contribution of common principles of canon law to ecclesial communion in Anglicanism’, (2008) 10 *Ecc LJ* 71–91; and N Doe, *An Anglican Covenant: theological and legal considerations for a global debate* (London, 2008). As for Roman Catholicism, the 1983 *Code of Canon Law* has been used as the basic legislative text and is available in English translation (London, 1997); other texts of importance include R Ombres, ‘Faith, doctrine and Roman Catholic canon law’, (1988) 1 *Ecc LJ* 33–41; and R Ombres, ‘National churches and the Roman Catholic Church’, (2002) *Law & Justice* 92–104.

instruments of communion: Archbishop of Canterbury, Primates' Meeting, Lambeth Conference and Anglican Consultative Council, but these cannot make decisions binding on churches. However, *The Principles of Canon Law* is a statement of principles induced from the common content of the substantive laws of the churches.<sup>10</sup> Furthermore, the Communion is currently debating adoption by each church of an Anglican Covenant on faith, mission and relationships, and whether such a covenant will bind each church juridically.

The Catholic Church, although it has a vast number of members and a global presence, because of its self-understanding has a strongly unified and hierarchical character, reflected in its canonical system. The baptised in full communion with the Catholic Church on earth are those who are joined with Christ in his visible body, through the bonds of profession of faith, the sacraments and ecclesiastical governance. As for the Church's supreme authority, one has to look at the Roman Pontiff and the College of Bishops. By virtue of his office, the Roman Pontiff not only has power (*potestas*) over the universal Church but also has pre-eminent ordinary power over all particular churches (such as dioceses) and their groupings. The Roman Pontiff, bishop of the church of Rome, has supreme, full, immediate and universal ordinary power in the Church, and he can always exercise it freely. This power reinforces and defends that of the bishops in their particular churches. The Roman Pontiff is always joined in full communion with the other bishops, and, indeed, with the whole Church. The College of Bishops has as its head the Supreme Pontiff and its members are the bishops as specified. This College, in which the apostolic body abides in an unbroken way is, in union with its head and never without its head, also the subject of supreme and full power over the universal Church. The main legislative manifestations of this ecclesiology are the 1983 *Code of Canon Law* for the Latin Church and the 1990 *Code of Canons of the Eastern Churches*.<sup>11</sup>

In Anglicanism, at national level, 'law' is understood as 'a binding public instrument created within a church by a duly constituted lawful authority of that church, that is, a species of human law as distinct from the will or law of God' (*Principles, Definitions*). Within each church, general law – typically

10 *Principles of Canon Law Common to the Churches of the Anglican Communion*, Anglican Communion Legal Advisers Network (London, 2008), p 17: '(1) There are principles of canon law common to the churches of the Anglican Communion; (2) Their existence can be factually established; (3) Each province or church contributes through its own legal system to the principles of canon law; (4) These principles have strong persuasive authority and are fundamental to the self-understanding of each of the member churches; (5) These principles have a living force, and contain within themselves the possibility for further development; and (6) The existence of the principles both demonstrates and promotes unity in the Communion.'

11 Limitations of space mean that the 1990 *Code* cannot be discussed here. It would be of significant interest in the light of the Anglican *Principles of Canon Law* and the possibility of a binding Covenant, in that the one *Code* governs a plurality of *sui iuris* churches in full communion. An initial task would be the exploration of the methodology used to draw out from a variety of sources a *ius commune*; cf Canon 1493 of the 1990 *Code*.

provincial – is created by a synod or other assembly representative of bishops, clergy and laity; and laws made at more localised levels (such as diocesan law created by the diocesan synod of bishop, clergy and laity) must be consistent with the general law. Some churches have a code of canons only. Most have a constitution, canons and other regulatory instruments, including rules and regulations, ordinances, resolutions and liturgical rubrics found in the service books. Alongside written laws are less formal and sometimes unwritten sources: customs or tradition, the decisions of church courts and, more rarely, the English Canons Ecclesiastical 1603, or pre-Reformation Roman canon law. In addition to formal laws, churches today increasingly use what may be styled ecclesiastical quasi-legislation: informal administrative rules designed to supplement formal laws (to clarify or implement them); these resemble laws (with prescriptive language) but may not bind in the same way as laws properly so called.

In a strict sense, ‘national churches’ are not possible in the Catholic Church, but in an extended and qualified sense the Eastern Catholic Churches and the Conferences of Bishops do have constitutive ‘national’ elements. There can be groupings of various kinds within the Catholic Church, and they can have some legislative and other power. One can look at ecclesiastical provinces and regions, at metropolitans, at particular councils and at Conferences of bishops. These ‘Conferences’ can issue general decrees only for those matters allowed by universal law or as determined by the Apostolic See. There is a significant body of complementary norms to the 1983 *Code*, including some by English-language Conferences of bishops. Of importance in an ecumenical context are the revised directory *Mixed Marriages*, promulgated by the Conference of Bishops of England and Wales in 1990, and the 1998 teaching document *One Bread One Body* on the Eucharist and sacramental sharing from the Conferences of Bishops of England and Wales, Ireland and Scotland. At the national level, more is involved than legislation properly speaking, including instruments such as guidelines and policy statements.

*The Principles of Canon Law* articulates several maxims about the sources and forms of Anglican canon law. Scripture, tradition and reason are fundamental authoritative sources of law. The laws of churches exist in a variety of formal sources, which should be identifiable, including constitutions, canons, rules, regulations and other instruments. Historical sources recognised as such in the canonical tradition, including custom, have such status within a church as may be prescribed by its law. Laws contain principles, norms, standards, policies, directions, rules, precepts, prohibitions, powers, freedoms, discretions, rights, entitlements, duties, obligations, privileges and other juridical concepts. Laws should be short, clear and simple to the extent that is consistent with their purpose, meaning and comprehensiveness (Principle 4). Moreover, a ‘principle of canon law’ is

a foundational proposition or maxim of general applicability which has a strong dimension of weight, is induced from the similarities of the legal systems of churches, derives from the canonical tradition or other practices of the church, expresses a basic theological truth or ethical value, and is about, is implicit in, or underlies canon law.<sup>12</sup>

In Anglicanism, the category ‘the principles of canon law’ is already formally recognised by at least four Anglican churches; and many churches explicitly appeal to principles in their own legal systems as the foundation for more detailed rules, giving the latter shape, coherence, meaning and purpose. The principles are general propositions or maxims that express fundamental ecclesial values; some are descriptive, others prescriptive. Principles differ from *rules* (which apply to specific circumstances) and enjoy a dimension of weight. A variety of sources is employed, from which the *Principles* are derived. Most are from church constitutions and canons, many from service books (which themselves enjoy canonical authority) and their liturgical norms. A great number come from historical sources (the authority of which may be canonically recognised or adopted by the laws of churches), such as the Book of Common Prayer 1662, from the canonical tradition, or from divine law or the practice of the church universal. Others are rooted in a theological idea expressed in laws or are derived from guidance issued by ecclesiastical authorities to supplement and explain church law. While the vast majority of the principles derive from similarities between the written laws of churches, some are based on unwritten assumptions, general propositions implicit in church laws. The juridical values of clarity, conciseness and consistency govern the form of the principles, which themselves are cast in a variety of different juridical formulae: most are permissions (‘may’), many are precepts (‘shall’, ‘must’), some are prohibitions (‘shall not’, ‘no-one shall’); many are exhortations (‘should’), expressing aspirational norms; and some are in the form of maxims (‘is’).<sup>13</sup>

Canon law, in the Catholic Church, could be defined as the amalgam of divine and human law. Fundamental theological issues are involved here. In terms of divine law (*ius divinum*), there is divine positive law and divine natural law. Both come from God, revealed fully in Jesus Christ. The Scriptures and tradition are inseparable and essential sources of canon law, understood in the light of the Church’s teaching authority. Human (ecclesiastical) laws specify in time and space the identity and mission of the Church, under God’s providence. The

12 *Principles of Canon Law*, Definitions.

13 For example: Book of Common Prayer, Principle 65.10 on baptism and confirmation of mature persons; canonical tradition, Principle 24.7, *nemo iudex in sua causa*; divine law, Principle 48.2, on the duty to proclaim the gospel; the practice of the church universal, Principle 61.1: baptism effects incorporation into the church of Christ; theological ideas, Principle 54.1: worship is a fundamental action of the church; and for juridical formulae see eg Principles 12, 16.2, 26.6, 42.5, 83.1.

1983 *Code of Canon Law* does treat of ecclesiastical laws, stating for instance that they come into being when promulgated, that laws generally concern matters of the future and not the past, that ‘merely ecclesiastical laws’ bind those who were baptised in the Catholic Church or were received into it, and that universal laws are binding everywhere on all those for whom they were enacted. Moreover, laws are authentically interpreted by the legislator or his delegate. If on a particular matter there is no express provision of either universal or particular law, nor a custom, then, provided it is not a penal matter, the question is to be decided by taking into account laws enacted in similar matters, the general principles of law observed with canonical equity, the jurisprudence and practice of the Roman Curia and the common and constant opinion of learned authors. Significantly, when the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, insofar as it is not contrary to divine law and provided it is not otherwise stipulated in canon law.

### **The subject matter and scope of law**

There is considerable but not exact convergence between Anglican churches nationally as to the subjects treated by their regulatory instruments. What differs is the instrument by which subjects are treated. Typically, *constitutions* treat matters of faith and doctrine, territorial, governmental and institutional organisation (legislative, administrative, judicial), appointment of bishops, discipline, and property; while *canons* address functions of ordained and lay ministers, and liturgical and sacramental matters. At international level, while the proposed Anglican covenant provides for common identity, communion relationships and commitments, the exercise of autonomy and management of communion issues, *The Principles of Canon Law* deals more widely with church order, communion relationships, government, ministry, doctrine, liturgy, rites, property and ecumenism. Equally, however, the principles recognise ‘the limits of law’: laws should reflect but cannot change Christian truths; laws cannot encompass all facets of ecclesial life; laws cannot prescribe the fullness of ecclesial life, ministry and mission; laws function predominantly in the public sphere of church life; and some laws articulate immutable truths and values (Principle 4).

The subject matter and scope of canon law have varied across the centuries and in different places. Simply to list the titles of the seven books that constitute the 1983 *Code*, they are: general norms, the People of God, the teaching office of the Church, the sanctifying office of the Church, the temporal goods of the Church, sanctions in the Church and, finally, processes. To specify further the contents of two of these books may be helpful. Book II, on the People of God, deals first with Christ’s faithful, then with institutes of consecrated life and societies of apostolic life and lastly with the hierarchical constitution of the Church. Book IV, on the sanctifying office of the Church, is also subdivided

into three parts. First there are the seven sacraments, then the other acts of divine worship and, finally, sacred places and times. The two *Codes* do not of course contain the whole of existing canon law. It is important to identify accurately the nature and authority of the various kinds of documents used for papal, curial or other pronouncements. This requires distinguishing such texts as Apostolic Constitutions, instructions, directories and so forth. There exist various canonical concepts – such as equity, dispensation and the salvation of souls – that interact with larger theological principles and values. An important interpretative norm states that ecclesiastical laws are to be understood according to the proper meaning of the words considered in their text and context. If the meaning remains doubtful or obscure, there must be recourse to parallel places, if there be any, to the purpose and circumstances of the law and to the mind of the legislator.

### **The purposes of Church law: theology and law**

In Anglicanism, the purposes of law are shaped by the understandings that each church has about the nature of the church (its ecclesiology) and about itself as an institutional church (its ecclesiality). First, at national level, the principal purposes of juridical instruments are to facilitate and to order the life and mission of that church; typically, law exists ‘to serve the sacramental integrity and good order of the Church and to assist its mission and its witness to the Lord Jesus Christ’ (Church in Wales). In turn, *The Principles of Canon Law* provides, on ‘law in ecclesial society’, that law exists to assist a church in its mission and witness to Jesus Christ; a church needs within it laws to order, and so facilitate its public life and to regulate its own affairs for the common good; and the law is not an end in itself (Principle 1). Globally, the objects of an Anglican Covenant are unity; reconciliation, recommitment and trust; identity, clarity and understanding; order and stability; and mission and witness. The purposes of the principles of canon law common to the churches are not dissimilar.

Secondly, there is an intimate relationship between church law and theology. While Anglican canonists have not yet developed a systematic theology of canon law, they often recognise theology *in* canon law, as theological ideas clearly surface explicitly (particularly in descriptive provisions) in laws. In turn, *The Principles* provide (in Principle 2) that law is the servant of the church; law should reflect the revealed will of God; law has a historical basis and a theological foundation, rationale and end; law is intended to express publicly the theological self-understanding and practical policies of a church; and law in a church exists to uphold the integrity of the faith, sacraments and mission, to provide good order, to support communion among the faithful, to put into action Christian values, and to prevent and resolve conflict.

Thirdly, therefore, the law of a church has a relationship with divine law. At national level, as with the proposed Anglican Covenant, Scripture is presented

juridically as the ultimate standard and rule in matters of faith, but there is no obvious legal evidence indicating a general practice that divine law binds directly in a juridical sense, nor that divine law vitiates contrary canon law. At international level, the *Principles* provides that church law should reflect the revealed will of God. They also recognise clearly, both explicitly and implicitly, the limited applicability of law in the Church: later laws abrogate earlier laws; laws are prospective and should not be retrospective in effect unless this is clearly provided for in the laws themselves; laws cannot oblige a person to do the impossible; persons cannot give what they do not have; laws should be applied in the service of truth, justice and equity; and laws may be dispensed with in their application to particular cases on the basis of legitimate necessity provided authority to dispense is clearly given by the law (Principles 2 and 7).

As with Anglicanism, in Catholicism the purposes of law are shaped by the Church's self-understanding. Canon law is, we might say, applied ecclesiology. There have been different schools of thought concerning canon law and its purposes, but we can select as a particularly authoritative and comprehensive account that given by Pope John Paul II in his Apostolic Constitution *Sacrae Disciplinaes Leges*, promulgating the 1983 *Code*. Although the focus was on the *Code* about to be promulgated, we find in this Constitution a sketch of a theology of canon law and a theology *in* canon law. In essence, the *Code* accords with the nature of the Church and especially expresses its ecclesiological doctrine. For Pope John Paul II, in a certain sense the *Code* could be viewed as a great effort to translate the ecclesiological teaching of Vatican II into canonical terms.

The Pope began with a reminder of the distant legal heritage contained in the Old and New Testaments, from which, as from its first source, derives the whole juridical and legislative tradition of the Church. He then adduced various texts from the New Testament before concluding that the purpose of the *Code* is not to replace faith, grace, charisms or charity. The *Code* looks to the achievement of order in the ecclesial society, such that, while attributing a primacy to love, grace and the charisms, it facilitates at the same time an orderly development in the life both of the ecclesial society and of its individual members. Over and above the fundamental elements of the hierarchical and organic structure of the Church established by the divine founder, and besides the principal norms that concern the exercise of the threefold office entrusted to the Church, it is necessary also to define certain rules and norms of action.

Since the Church is established in the form of a social and visible gathering, continued the Pope, it needs rules so that its hierarchical and organic structure may be visible; that its exercise of the functions divinely entrusted to it, particularly of sacred power and the administration of the sacraments, is properly ordered; that the mutual relationships of Christ's faithful are reconciled in justice based on charity, with the rights of each safeguarded and defined; and lastly that the common initiatives, which are undertaken so that Christian life

may be ever more perfectly carried out, are supported, strengthened and promoted by canon laws.

### **The effect and enforcement of law**

In Anglicanism, the extent to which, and the ways in which, regulatory instruments are binding vary between the different churches. At national level, in some churches the laws bind only ordained ministers, but in others they bind both ordained and lay persons. Often laws provide for undertakings to be made by church members to assent to or comply with the law. The administration and enforcement of law is assigned to a variety of institutions. On the one hand, compliance is effected by means of executive or quasi-judicial authority, typically on the basis of the doctrine of canonical obedience – clergy must obey the lawful and honest directions of their bishops. On the other hand, churches provide for formal judicial law enforcement and resolution of conflict: courts and tribunals are ordered hierarchically and their subject-matter jurisdictions are prescribed in laws. Alongside the courts, numerous commissions and other bodies may be charged with the function of authoritative interpretation. Failure to comply with the laws may result in proceedings for offences and imposition of sanctions (typically conceived as medicinal and corrective, such as rebuke, suspension and exclusion). The proposed Anglican Covenant, too, provides for discipline (namely, for a decision of the instruments of communion in the case of relinquishment of the purposes of the covenant), and one proposal is for it to bind legally (through enactment in the law of each church).

By way of contrast, *The Principles of Canon Law* do not bind the churches internationally but are of persuasive authority. The principles have the appearance of laws (they may be preceptive, prohibitive or permissive), but they are not themselves laws: they are principles of law. Indeed, the principles themselves are evolutionary. The idea here is that each church, through its own legislative activity, may contribute to or subtract from the store of principles, particularly when such developments are replicated around the Communion. For example: churches are increasingly legislating to forbid racial discrimination in the membership and government of the church; also, churches are developing rules on the admission of the unconfirmed to Holy Communion, particularly children. However, the *Principles* recognise the binding effect of the laws from which they are induced: the law binds the bishops, clergy and lay officers; the laws of a church may bind lay people who do not hold office; no-one shall be above the law; all institutions and persons in positions of authority or office, ordained and lay, shall act in accordance with law; laws, rights and duties are enforceable within a church by its own ecclesiastical authorities through executive action or by judicial process; any person or body injured by a violation of law should be able to obtain a remedy before a competent ecclesiastical authority in accordance

with the law; and, a voluntary declaration, or other form of assent prescribed by law, to comply with ecclesiastical jurisdiction, binds the person who makes that declaration (Principle 5). The *Principles* also deal with the interpretation of law.<sup>14</sup> Finally, most Anglican churches function in civil law as voluntary associations, and their internal rules have the status of terms of a contract, entered into by the members, which are enforceable in matters of property in state courts.

In Catholicism, canonical laws by their nature demand observance. We have already considered how full communion involves being joined with Christ in his visible body through ecclesiastical obedience, and how universal ecclesiastical laws (let alone divine law, positive and natural) are binding everywhere on all those for whom they were enacted. The power of governance or of jurisdiction belongs to the Church by divine institution, and it is divided into legislative, executive and judicial power. In accordance with the provisions of the law, those in holy orders are capable of the power of governance, while lay members of Christ's faithful can co-operate in the exercise of this same power in accordance with the law. All may lawfully vindicate the rights they enjoy in the Church before the competent ecclesiastical forum in accordance with the law.

The Church has an inherent right to constrain with penal sanctions Christ's faithful who commit offences. In outline, the penal sanctions of the Church are medicinal penalties or censures and expiatory penalties. The Church may deprive a member of some spiritual or temporal good, consistent with the Church's supernatural purpose. Use can also be made of penal remedies and penances, the former primarily to prevent offences, the latter rather to substitute for or to increase a penalty.

How the Catholic Church is considered in civil law obviously varies throughout the world and may be affected by the existence of concordats or other binding agreements. In terms of its own ecclesiology, the Church asserts the duty and inherent right, independent of any human authority, to preach the gospel to all peoples, using for this purpose even its own means of social communication. Indeed, it pertains to the Church always and everywhere to proclaim moral principles, even in respect of the social order, and to make judgments about any human matter in so far as this is required by fundamental human rights or the salvation of souls.

14 *Principles of Canon Law*, Principle 8.1–4: 'laws should be interpreted by reference to their text and context; laws are to be understood according to the proper meaning of their words; authoritative interpretations of law may be issued by church courts or tribunals, or by commissions or other bodies designated to interpret the law, in such cases, in such manner and with such effect as may be prescribed by the law; and if in a church the meaning of laws remains in doubt recourse may be had to analogous texts, the purposes and circumstances of the law, the mind of the legislator, the jurisprudence of church courts and tribunals, the opinion of jurists, the principles of canon law and theology, the common good, and the practice and tradition of that church and of the church universal'.

## Conclusion

In sum, both the Anglican Communion and the Catholic Church are governed by complex systems of law but, unlike Catholics, Anglicans have no global canon law. The respective ecclesiologies, emphasising either a universal papal authority and episcopal collegiality or provincial and national autonomy, mean that national laws have a different significance for each system. *The Principles of Canon Law* represents a significant innovation in the Anglican landscape: although it does not have the juridical authority that is provided for the Catholic Church by its two *Codes of Canon Law*, it nevertheless gives evidence of a global canonical picture for Anglicanism and permits a fuller comparison than by simply referring to the individual Anglican churches. Both Anglicans and Catholics agree that Scripture and tradition are fundamental sources for canon law, though Anglicans do not have the categories of divine positive law and divine natural law. In Anglicanism, the making and application of law involves the laity more than occurs among Catholics, who stress the clerical nature of the power of governance. There is a good deal in common concerning the subjects dealt with by the respective laws, not least as regards governance, ministry, property and the sacraments. Both systems have to relate to civil law. Anglicans and Catholics have similarities in their approaches to the interpretation and enforcement of law.

Canon law can be perceived as an obstacle to the advancement of fuller visible communion because of its need for clarity, certainty and stability. This may in part explain why comparative canon law has been the missing link in much ecumenical dialogue. However, given its thoroughly theological nature and its capacity to order and facilitate Christian life and mission, it definitely has its place in ecumenical dialogue and activity. In a surprisingly detailed way, we have identified a common legal heritage, profound existing similarities and possible future convergences.

## CANONICAL SIMILARITIES

The canon law of the pre-Reformation period, extending over 1500 years since the councils of the early Church, represents a common heritage of the Anglican and Roman Catholic communions, which underpins, informs and affects their modern canonical systems. The search for and discovery of canonical similarities in the two communions lie at the very heart of the continuing work of the Colloquium. We address the subjects in the order in which they were considered by the Colloquium, and our findings can be summarised as follows under each subject.

### Church property

#### *The nature of ownership*

Although canon law recognises the same criteria for determination of ownership as are implied in secular law, the fundamental difference is that by its

law the Church treats property as being held in trust for its general purposes and benefit. The concept underlying the canonical norms and rules is Christian stewardship, which requires accountability to God for the right use of all the temporal goods with which He has endowed the Church. All juridic ownership vested in ecclesiastical authorities is limited by the overriding imperative to promote the Apostolic mission of the Church.

### *The limits of autonomy*

Real and personal property acquired for the benefit of the Church is vested in juridic legal persons in accordance with the requirements of civil law but their ownership is subject to higher Ecclesiastical Authority, which establishes and exercises governance over the juridic persons holding the property.

The special character of church buildings that have been consecrated necessarily implies that they are permanently set apart for sacred use and the laws of both communions ensure not only that dedication or consecration takes place but that thereafter such buildings are inalienable, save with the consent of the appropriate ecclesiastical authority. In both canonical systems there are restraints and restrictions imposed upon the independent discretion of canonical proprietors, who are accountable to those bodies or authorities exercising administrative oversight. Thus, the day-to-day direction and control of properties, whether vested in a parish, a priest, a bishop or trustees is subject to the overriding control of higher ecclesiastical authority. Due allowance is made in both systems for the principle of subsidiarity, which reposes and recognises an appropriate level of autonomy and independent judgement.

### *Financing patrimony*

The principle of Christian stewardship finds its expression perhaps most forcibly in the canons and constitutional laws of both the Catholic and the Anglican communion in relation to the obligations of the faithful individually, and of parishes collectively, to support the mission of the Church, which is invested under both canonical systems with the right to receive such offerings:

*Freewill offering:* The duty of church members as individuals to contribute according to their means for the support of the church has an ancient provenance, to be found in the canons of the Early Church and adumbrated as a principle in the work of Gratian. Not surprisingly, therefore, both the Catholic and Anglican systems give canonical emphasis to this duty.

*The parish share:* Within both the Catholic and the Anglican communion the important objective of the canon law is to enable every diocese to accumulate a fund of money to be applied to the needs of the diocese or of the national or provincial assembly, and in both cases such payment is actually derived from contributions made by the parishes imposed through the agency of the bishop or of diocesan financial boards. In both churches there is to be found

formal canonical or constitutional provision for the administration and collection of the levy or quota.

*The underlying principle of assessment:* The Anglican churches most commonly employ formulae based upon the relative ability of parishioners to pay, founded on the notion of fairness and usually developed by each diocese for the purpose of calculation employing various criteria. So, too, in the Catholic Church, parishes are levied proportionately according to their means.

*The duty to pay:* The obligatory character of these provisions in both canonical systems is underpinned by norms that articulate the duty of the faithful to assist with the needs of the Church.

*Appeals:* Finally, the absence of a right of appeal or review against the quota or levy in the Roman Catholic canon law is reflected in the canonical and constitutional arrangements of the vast majority of the churches in the Anglican Communion.

### *Investment*

Prudent investment is a common requirement and duty, imposed often by the formal constitutional laws of the Anglican churches and in their various Canons. The canonical proprietors enjoy powers of investment subject to control of superior ecclesiastical authority, and, in Anglican canon law, proper investment is often expressed as a duty. The comparable position in the *Code of Canon Law* is that all administrators are bound to fulfil their office with the diligence of a good householder (Canon 1284) and, in particular, they must invest surplus money profitably with the consent of the diocesan bishop. Under both systems, of course, the investment income must be applied for the purposes of the Church.

## **Clergy discipline**

### *Ecclesiastical offences*

In both churches, the precise norms of discipline are grounded in pastoral and advisory instruments whose purpose is to describe the essential components of the clerical way of life, with emphasis upon exhortation to ministerial service that is founded upon the pattern of Christ. Both canonical systems recognise a division between offences touching upon conduct and those relating to doctrine and liturgy, and use different procedures for resolving such cases. Both churches express preference for disciplinary matters to be resolved by fraternal correction, by non-judicial administrative action or by discipline where there has been a failure to perform clerical functions or duties or where there has been a pastoral breakdown involving the priest, rather than invoke a formal disciplinary process.

### *The role of the bishop*

In both communions, the functions of diocesan bishops include the general oversight of and jurisdiction over clergy in all aspects of ministerial service, and both systems adopt a variety of measures of an administrative or

quasi-judicial nature, designed to secure compliance and correction of clergy and ranging from precepts to the prohibition of irregularities in liturgy doctrine, the application of complaints and the management of a breakdown in pastoral relations. The use of appraisal to achieve improvement as well as correction is increasing.

### *Sanctions*

The policy objective in both legal systems is to temper the rigours of the law with pastoral concern, on the principle *pro salute animae et reformatione morum*. The protection of the ecclesial community is balanced in both systems with the need to protect the soul of the offender.

*The protection of the community:* In each communion there are expiatory measures such as deprivation from office and even dismissal from the clerical state, and sanctions that are corrective in purpose such as prohibition (inhibition in the Anglican Communion), suspension involving disqualification from the performance of certain duties and privileges, and excommunication, usually predicated upon a failure to repent and a persistence in the misconduct complained of notwithstanding prior warnings and pastoral advice.

*The reform of the offender:* In both churches there are remedial sanctions directed towards achieving reform of the offender, such as admonition (or monition), that provide a foundation for more serious measures if the admonishment is disregarded and there is a repetition of the offence.

*Reconciliation:* In both systems, where the offender is repentant, then forgiveness in the form of a remission of sanctions and even reversal of censures is allowed to operate.

*Reintegration:* Neither in the *Code of Canon Law* nor anywhere in Anglican canon law are there to be found positive provisions requiring an offender to be reintegrated into the ecclesiastical community, following completion of the sanction.

## **Initiation and membership**

### *Initiation – baptism*

*Adults:* Both canonical systems treat all living persons as potential recipients, in accordance with the teaching of Christ, and provide that adults must be properly instructed and prepared. The extent of the instruction is not precisely formulated. In the matter of disposition, both churches impose the dual test of faith in Christ and repentance of sins in accordance with the Gospel teaching. A limitation upon the baptism of adults to be found in both communions relates to capacity with adults of unsound mind being treated as infants for the purposes of the sacrament.

*Infants:* The shared current practice of infant baptism has a provenance reaching back to the Early Church, which was maintained in the mediaeval canon law.

As to preparation, both the churches place the obligation to prepare parents and godparents upon the clergy, in particular the parish priest in regard to the meaning of the sacrament and the obligations attached to it, although the norms are expressed in exhortative terms and particularised in local schemes of preparation within the diocese.

Both canonical systems impose limitations, in that the sacrament is conferred only upon infants who are actually born and both systems reflect the natural law requiring at least one parent or guardian to consent to baptism and the expectation of a Christian upbringing. Both churches provide in the law for delay or deferment rather than outright refusal of the sacrament when a founded hope of Christian upbringing is truly lacking, and both communions employ pastoral guidelines for the exercise of judgement by priests and bishops.

*The minister of baptism:* In both churches the ordinary minister of baptism is a bishop, priest or deacon, with particular preference for the parish priest holding responsibility for the faithful in his care, but provision is also made for members of the laity to baptise in cases of necessity.

*Administration:* The sacrament is validly conferred under both canonical systems by immersion or pouring, accompanied by the Trinitarian formula.

*Sponsors:* As to sponsors or godparents, the laws of both churches recognise and implement ancient custom of the church that an adult is to be admitted to the sacrament only with a godparent who assists in the preparation and supports the newly baptised in adherence to the faith, and the extension of that requirement to infant recipients to the intent that the family should receive spiritual reinforcement from the sponsors.

### *The consequences of baptism*

In both communions baptism is indelible, cannot be repeated and is the gateway to all the other sacraments and the foundation of juridical status. As to recognition, neither communion has perfected criteria on the basis of which baptisms in other denominations are recognised as valid, but recognition is unquestionably based upon the invocation of the Trinitarian formula, coupled with the use of water. In both communions there is provision for conditional baptism, which is required where there is doubt concerning the baptism. Registration is a requirement under both systems.

### *Initiation – confirmation*

In both canonical systems baptism is a prerequisite to confirmation. Both systems require preparation and both have authorised liturgical rites for the ceremony of confirmation.

### *Initiation – Eucharist*

The perfection of initiation is recognised in both communions as sharing in the Eucharist. In both communions there is detailed canonical provision for

celebration of the Eucharist, admission to it and exclusion from it. In certain circumstances, there can be sharing in Holy Communion as celebrated by churches not in full communion with each other, in both Anglican and Roman Catholic canonical systems.

### *Membership*

There is no precise concept of membership in either Anglican or Roman Catholic canon law. The terms ‘member’ and ‘membership’ are not useful in signifying the relationship of belonging to the Church. Emphasis is placed upon ‘The people of God’ or ‘Christ’s faithful’, and sometimes expressed in Anglican canon law in terms of classes of church members (baptised, communicant, regular, resident parishioners). Those baptised are fully in communion with the Catholic Church through the bonds of profession of faith, participation in the sacraments and submission to ecclesiastical governance.

### **Authority**

#### *The mission of the Church*

The proclamation of the faith as mandated by Christ (Mark 16:15) is the foundation for the entire missionary activity of the Roman Catholic and Anglican churches, so that the authority of Christ is the foundation for their teaching offices and that authority is reflected in the canonical provisions of both churches.

#### *Authority of Holy Scripture and tradition*

Both recognise the authority of Scripture in canonical provisions, and tradition, as a foundation for official doctrine and for belief.

#### *Authority of the Holy Spirit*

The concept of divine activity finds expression in canonical provisions of a number of Anglican churches in relation to decisions of synods, the function of liturgy, the motivation for ministry, and sacramental activity. So also, the *Code of Canon Law* expressly recognises inspiration of the Holy Spirit.

#### *Authority of ordained ministers*

The laws of both communions give explicit and implicit recognition to the authority of the ministerial orders of bishop, priest and deacon derived from the continuous tradition and teaching of the Church from the time of the Apostles. The primacy of episcopal authority is common to both systems.

#### *Authority of bishops*

The primacy of episcopal authority is common to both churches, and the comprehensive authority of the bishops in the furtherance of the mission of the churches is reflected in canonical provisions regulating worship, teaching and governance.

### **Orders: fundamental elements**

The fundamental elements prescribed for the rite of ordination are common to both traditions and from these fundamental elements we obtain an understanding of the nature of sacred ordination.

Both communions agree in the belief that the Holy Spirit is active in ordination and the liturgy performed provides an assurance that ordination is the action of God through His Church. Both communions agree that ordination is the fulfilment of what the Church intends and that in canon law it is of divine institution, confers indelible character with the consent of the candidate through the imposition of hands by the bishop and prayers for the invocation of the Holy Spirit, to give grace for the work of a priest or deacon. Neither canon law provides a clear definition of apostolicity. Roman Catholic and Anglican canon law do not prevent the development of a shared understanding of apostolic succession that may provide an opportunity for recognition of ministries. We share an interest in the growing understanding of historic apostolic succession and apostolicity and expression in canonical categories.

### **Ministry**

#### *Suitability*

There are substantial similarities on qualification for ordination and on suitability for ordination and the functions of ministry and discipline. No person shall be admitted to holy orders unless called, tried, examined and admitted according to the rite of ordination. Ordination is to be conferred only on those who, in the prudent judgment of the proper bishop or competent major superior, have sound faith, are motivated by the right intention, are endowed with the requisite knowledge, enjoy a good reputation and have moral probity, proven virtue and the other physical and psychological qualities appropriate to the order to be received.

### **Formation for ordained ministry**

#### *The obligation of proper formation*

The Church has a responsibility to provide for clerical formation. In Anglicanism, clerical formation is in the keeping of each church, which generally has little particular law on the matter, though global policy to effect common standards throughout the Communion is a recent development. In the Roman Catholic Church, clerical formation is regulated by universal law supplemented by particular norms (national, diocesan and inter-diocesan), as well as by proper laws with respect to institutes of religious life.

#### *Essential properties and ends of formation*

Clerical formation is necessary to assure the quality of ministry, which is a means by which all the faithful receive the spiritual benefits of the church.

The essential end of clerical formation is to equip ordination candidates for a life of holiness, sacramental ministry, preaching and pastoral care. Clerical formation is continuing and lifelong.

*The fundamental content of formation programmes*

The two communions share a concern to ensure that clerics are duly grounded in the doctrine and discipline of the Church. Clerical formation includes training in canonical matters relevant to the exercise of ordained ministry. Ecumenical collaboration as to aspects of clerical formation is desirable and growing in practice.

*Current issues of civil law*

Both communions acknowledge the possibility of conflict between canonical arrangements for clerical formation and civil law, such as in relation to confidentiality, discrimination, psychological assessment and employment. The respective policies of the two communions on marriage and celibacy affect the shape of clerical formation and instruction in seminaries.

**Marriage**

*Marriage as a natural institution*

Marriage is basic to humanity as made and intended by God in creation. When Christians marry, a particular grace is given through Christ.

*Essential elements and proper ends*

The essential elements of marriage are that it is between a man and a woman, that it is lifelong in intention and that it is exclusive of all others. Marriage is best suited both for the procreation and nurture of children and for the mutual support of the spouses.

*The right to marriage*

Marriage can even be considered as a natural right and should not therefore be restricted or impeded unduly by any authority.

*Preparation for marriage*

Both communions place a responsibility on clergy, together with their community, to provide instruction for couples preparing for marriage. Clergy must ensure that couples are free to marry. Prior to any re-marriage, for Anglicans and Roman Catholics, careful preparation, investigation, consultation or adjudication of the circumstances of the breakdown of the previous marriage takes place as is judged necessary by competent ecclesiastical authority.

*Ongoing marriage pastoral care*

Clergy, together with their community, should provide post-marriage care for couples who have been married and for married and family life. In both

communions, norms on the conduct of family life are dispersed among canon laws, liturgical texts and catechetical texts.

### **Conclusion**

The most significant canonical similarities derive from historic, and in some instances ancient, sources that have survived into the modern systems. The areas where we found particular similarity are the sacraments of initiation, the ministry for service to the people of God and a pastoral concern for marriage and the family.

### CANONICAL DIFFERENCES

This section has as its purpose the identification of some of the key juridical differences that emerged in prior meetings of the Colloquium over the past ten years. They are neither meant to be exhaustive nor are they necessarily all considered obstacles to ecumenism. Nor should they be viewed as of great moment. Some reflect central doctrinal and canonical principles; others could even be classified as curiosities.

#### **Conceptual and procedural**

There are a number of differences and distinctions of principle between canon law of the Anglican Communion and that of the Roman Catholic Church.

##### *Universal/local*

The canon law of the Roman Catholic Church is in large measure universal: an identical canon law applies to all Catholics worldwide, wheresoever they may live or worship. Conversely, that of the Anglican Communion is local, with each province being legally autonomous, governed by its own constitutions and/or canons, from which certain principles can be deduced.

##### *Codified/dispersed*

The canon law of the Roman Catholic Church is largely codified and now to be found, for the Latin Church, in the 1983 *Code of Canon Law*, whereas Anglican canon law is more generally dispersed and located in a variety of canons, regulations and norms, some provincial, some national and others diocesan.

##### *Clerical/lay*

Since many ecclesiastical offices otherwise reserved to clerics require or recommend a degree in canon law, as a general rule, those who practise canon law in the Roman Catholic Church are ordained, whereas, in the Anglican Communion, practitioners, both judicial and advisory, tend to be members of the laity who are qualified in secular state law and have developed an additional expertise in ecclesiastical law. Instruction and training in canon law tends to be

neglected in Anglican seminaries, whereas it features significantly in the clerical formation in the Roman Catholic Church. A relatively large number of bishops in the Roman Catholic Church are canonists, while the specialisation is rare among Anglican bishops. In general, it should be observed that the role of the laity in governance is a constitutive element in Anglican polity.

### *Anomalous features of the Church of England*

A key feature of the Anglican Communion is that its individual provinces are in communion with the See of Canterbury, a component diocese of the Church of England, which is an established church for a geographical part of the United Kingdom. Accordingly it is subject to primary legislation, in the form of Measures, and additional regulation by way of canons, each of which in slightly different ways requires state approval. Establishment is unique to the Church of England. Other churches in the Anglican Communion function under civil law on the basis of consensual compact.

### **Property**

Roman Catholic canon law has both clear universal principles and detailed specific regulations for ecclesiastical property and sacred places and goods, whereas the Anglican position is subject to local and regional variation. The Roman Catholic Church operates a system of ecclesiastical taxation that is universal and compulsory, with the bishop as the taxing authority, whereas that in the Anglican Communion systems is local or provincial: in some instances it is merely voluntary, and the taxing authority is synodical. The wide scope of papal primacy in matters of property finds no equivalent in the Anglican Communion, where concepts of dispersed authority and local ownership prevail.

### **Clerical discipline**

The key difference concerning clergy discipline is that Roman Catholic procedures are generally conducted in private and determined by clergy, whereas Anglican canon law provides for secular lawyers and judges to be involved in the process and, in some provinces, hearings take place in public. The Anglican Communion has no equivalent to the Roman Catholic canonical institute of incardination. Perhaps as a consequence, while both communions continue to regard clergy as office-holders, there is a tendency in certain provinces of the Anglican Communion to engage more fully with the state legislatures in matters of secular employment law. It should be noted that in many provinces of the Anglican Communion a considerable number of clergy are non-stipendiary and employed in secular posts. The Roman Catholic Church seems to make more successful use of extra-judicial disciplinary process than does the Anglican Communion.

The norms regulating the inscription of and jurisdiction over clerics, their rights and obligations, and their loss of the clerical state are treated in Book II of the *Code of Canon Law*, Canons 265–293.

### Church membership and initiation

The two communions are similar in that baptism is the rite of initiation into the Church of God and is, in itself, non-denominational. The Church of England, anomalously, has legal duties to marry and to bury parishioners irrespective of any concept of ‘membership’ but, with the exception of the Church in Wales, this vestige of establishment is not replicated elsewhere in the Anglican Communion.

In the Roman Catholic Church, membership within it comes with baptism by a Catholic minister and according to Catholic rites, or by another minister who intends to incorporate the one being baptised into the Roman Catholic Church, respecting the desire of the baptisand or his or her parents. An already baptised person is made a member of the Roman Catholic Church through the profession of faith and rite of reception carried out by an authorised minister. Through either of these gateways the person becomes bound by ecclesiastical laws and the subject of their rights and obligations. The principle of *semel catholicus semper catholicus* holds that no one can withdraw himself or herself from the bonds of ecclesiastical law, either through excommunication or through an act of defection, formal or otherwise. It is the rare exception to this principle that one who formally defects from the Catholic Church is no longer subject to the matrimonial impediment of disparity of worship or the obligation of observing the canonical form of marriage.

In the Roman Catholic Church there are complex norms regulating the administration of the sacrament of confirmation by a presbyter.

### Authority

Two critical differences between the Roman Catholic Church and the Anglican Communion are the role of the Petrine office and the primary concentration in the hands of the clergy of the threefold *munera* of teaching, sanctifying and governing.

Roman Catholic doctrine and discipline affirms that, by virtue of his office, the Roman Pontiff possesses supreme, full, immediate and universal ordinary power in the Church, which he is always able to exercise freely. Even though the supreme authority of the Church resides also in the College of Bishops, membership in that college depends on each bishop’s communion with the Roman Pontiff and the canonical mission, which the same Pontiff confers on him. The College cannot act except in union with its head. An ecumenical council’s decrees require the approval of the Roman Pontiff, and, when the Apostolic

See is vacant, a council in session is automatically suspended so that the new Pontiff is free either to continue or to dissolve it.

While the exercise of jurisdiction by the Roman Pontiff respects the principle of subsidiarity, he is free to exercise it freely even within particular churches. This contrasts with a primacy of honour accorded to the Archbishop of Canterbury within the Anglican Communion as one of its Instruments of Unity, but with each primate presiding over a composite autonomous province.

The second critical difference with respect to the exercise of authority is that, in the Roman Catholic Church, lay persons are said only to 'co-operate' in the exercise of the power of governance, for which clerics are said to be 'qualified'. Furthermore, only clerics may hold those offices that carry with them the exercise of jurisdiction. Exceptions to this include members of finance councils, whose consent is required in order for superiors to place certain financial acts, and the role of one lay judge on a panel together with two clerical judges.

Most consultative bodies that include lay members are only advisory and not deliberative (such as diocesan synods, diocesan and parish pastoral councils). The superior in question controls the agenda and is the sole decision-maker. The same holds for most of the consultative roles of others in the Church including, for example, that of the Synod of Bishops vis-à-vis the Pope and the presbyteral council vis-à-vis the diocesan bishop.

The role of Anglican lay persons in law-making and administration is more extensive and determinative. Principle 15.9 of *The Principles of Canon Law* provides that 'Bishops, clergy and laity of a church share authority in synodical government'. See also Principle 25.3: 'Lay persons exercise authority in church life and governance according to law'.

### Orders and ministry

The Roman Catholic members reaffirmed that *Apostolicae Curae* was a valid statement for its time and that it was teaching that is to be definitively held. It was recognised that the application of too narrow a test for establishing apostolic succession leads nowhere ecumenically, and that the arguments of *Apostolicae Curae* were met by equally cogent arguments from the Anglican bishops, particularly that the Roman approach would necessarily result in the conclusion that all ordinations of the first millennium were 'invalid'. The non-catholic Eastern Churches speak of Anglican orders having a 'spiritual' validity. The Anglican side of the argument was that apostolicity is possible without communion with the Pope and resides not only in tactile succession but also in continuity of the ecclesial communities under episcopal leadership. It was agreed that the main challenge was how to define apostolic faith and how much of it should be present to justify recognition. In the light of definitive teaching contained in *Apostolicae Curae*, the Roman canon law cannot generically confirm the recognition of Anglican orders.

The admission of women to the presbyterate and episcopacy creates a further problem for Roman Catholics concerning the validity of Anglican orders more generally. Does the belief common among many Anglicans that women can be validly ordained to the priesthood vitiate the intention of even a validly ordained bishop? Similarly, the Protestant denial of the sacramentality of holy orders raises further questions about the content of an Anglican bishop's intention when he ordains, even if in individual cases the validity of his own episcopal orders were affirmed. At very least, the Roman Catholic Church would univocally deny the validity of any ordination attempted to be conferred by a woman Anglican bishop. The very category of 'validity' is a further difference between the two canonical systems.

In the Roman Catholic Church, the leadership role of the laity in most liturgical functions is rather narrow and seen primarily to supply for the lack of clergy.

### **Clerical formation**

Once again, in the Roman Catholic Church regulation of this matter is highly centralised. There is a lengthy treatment of priestly formation in the *Code of Canon Law* and in other documents generated by the Congregation for Catholic Education, which has competence in this area. It is noteworthy, however, that there is ample provision for adaptation at the national level such that clerical formation be tailored both to the educational systems of different nations and to the historical, social and pastoral needs in various places.

The long quasi-monastic dimensions of seminary formation in the Roman Catholic tradition could be identified as a difference between it and the Anglican Communion on this topic. Indeed, the law of celibacy, which is obviously not a concern in the Anglican Communion, has a significant influence on many aspects of priestly formation in the Roman Catholic Church.

### **Marriage**

In the Colloquium's discussion of marriage, its indissolubility was identified as an ideal and an expectation on the part of both groups. The dissolution of marriage must always remain exceptional. However, even though the doctrinal views of marriage underpinning the legal provisions of each communion contain fundamental similarities, each communion employs radically different views of the role of civil law on marriage, and this is evidenced particularly in the attitudes taken to dissolution. Whereas the Roman Catholic Church has extensive norms on mixed marriages, few Anglican churches have provincial norms operative on this subject. A fuller consideration of this topic might include an overview of the operation and provisions of the system of permissions and dispensations that operate according to Roman Catholic canon law, particularly the dispensation from form. For example, what constitutes 'grave difficulties'

(Canon 1127 §2)? Would the advantage of good ecumenical relations in itself be a sufficient 'serious reason'? Anglicans could perhaps move towards the recognition of Catholic disabilities (impediments) to enter valid marriages.

The Roman Catholic canon law of marriage makes the distinction between matters of natural and positive divine law with regard to marriage on the one hand, and merely ecclesiastical law on the other. This distinction is helpful in determining which laws are binding on all persons (divine law) and which are subject to dispensation (ecclesiastical laws). When divine law is not at issue, the Roman Catholic Church has lately recognised in the instruction *Dignitas Connubii* the normative character of the law of 'ecclesial communities' (among which, for this purpose, the Anglican Communion may be categorised) in adjudicating the validity of marriages that take place within the Anglican Communion. But here again, the category of 'validity' appears to be one of greater moment to Catholics than to Anglicans.

### Conclusion

The most significant canonical differences discussed above appear to be fundamentally rooted in principles of theological doctrine and therefore not subject to merely ecclesiastical law. Such issues, therefore, as papal primacy and infallibility, the ordination of women, divorce and remarriage, and the role of the laity in governance present the greatest challenges to fuller visible communion.

## THE UTILITY OF CANON LAW IN DIALOGUE

It is not possible to consider the utility of canon law in ecumenical dialogue without some understanding of its place in the life of the Church.

### Ecclesial self-understanding

The twentieth century saw both the Anglican Communion and the Roman Catholic Church reflecting on their self-awareness as Church. For the outset, it must be acknowledged that the two traditions hold very different understandings of the nature of the visible Church.

From the Roman Catholic point of view, it is in the Dogmatic Constitution on the Church, *Lumen Gentium*, promulgated by the Second Vatican Council (1962–1965), above all other documents that the Church expresses its own self-awareness. Whereas the First Vatican Council had begun its Constitution on the Church with the primacy of the Roman Pontiff and the hierarchical nature of the Church,<sup>15</sup> Vatican II adopted a radically different approach. Vatican II spoke

15 Concilium Oecumenicum Vaticanum I, 'Constitutio Dogmatica *Pastor Aeternus* de Ecclesia Christi', in HJD Denzinger and A Schönmetzer (eds), *Enchiridion Symbolorum Definitionum et Declarationum de Rebus Fidei et Morum*, 33rd edition (Barcinone, 1965), 3050–3075.

initially of the Church as a mystery, devoting the first chapter of *Lumen Gentium* to the theme. A good summary of the Council's view of the Church is found in a quotation it used from St Cyprian, in which the Church is seen to be 'a people brought into unity from the unity of the Father, the Son and the Holy Spirit'.<sup>16</sup>

### **The Church as a visible reality**

In the eyes of the Council, the fundamental essence of the Church is that of a people called to live in intense communion with God – Father, Son and Holy Spirit. This teaching is expanded in Chapter II, which deals with 'The people of God'. Vatican II addresses the issue of the hierarchical nature of the Church only in Chapter III, making it clear that this hierarchical structure is in the service of both the Church as a mystery and the Church as the people of God:

In order to shepherd the People of God and to increase its numbers without cease, Christ the Lord set up in his Church a variety of offices which aim at the good of the whole body. The holders of office, who are invested with a sacred power, are, in fact, dedicated to promoting the interests of their brethren, so that all who belong to the People of God, and are consequently endowed with true Christian dignity, may, through their free and well-ordered efforts towards a common goal, attain to salvation.<sup>17</sup>

First and foremost, in its essence, the Church is a people called by God to share in the innermost life of the Trinity, called to a life of holiness; the hierarchical and visible structure of the Church exists to serve this goal, this divine purpose, that all those whom God has called may achieve the holiness intended: an intimate life with God. The theme of the universal call to holiness is set out in Chapter V:

Therefore all in the Church, whether they belong to the hierarchy or are cared for by it, are called to holiness, according to the apostle's saying: 'For this is the will of God, your sanctification' [1 Thess. 4: 3; cf Eph. 1: 4]. This holiness of the Church is constantly shown forth in the fruits of grace which the Spirit produces in the faithful.<sup>18</sup>

The hierarchy in the Church has been established as a means towards helping the people of God achieve their fundamental goal, sanctification. This hierarchy is part of the visible, social phenomenon that is identified as the Church. The Council was at pains to point out that the visible social structure is not in any

<sup>16</sup> *Lumen Gentium*, 4.

<sup>17</sup> *Ibid.*, 18.

<sup>18</sup> *Ibid.*, 39.

way at odds with the fundamentally mystical reality of the Church as the people of God:

The one mediator, Christ, established and ever sustains here on earth his holy Church, the community of faith, hope, and charity, as a visible organization through which he communicates truth and grace to all. But the society structured with hierarchical organs and the mystical body of Christ, the visible society and the spiritual community, the earthly Church and the Church endowed with heavenly riches, are not to be thought of as two realities. On the contrary, they form one complex reality which comes together from a human and a divine element.<sup>19</sup>

The Council's Constitution on the Sacred Liturgy provides this summary:

The Church is essentially both human and divine, visible but endowed with invisible realities, zealous in action and dedicated to contemplation, present in the world, but as a pilgrim, so constituted that in her the human is directed toward and subordinated to the divine, the visible to the invisible, action to contemplation, and this present world to that city yet to come, the object of our quest.<sup>20</sup>

### Anglican understandings of the Church

There is much in this with which Anglicans would agree but, for them, the historical expression of the life of the Church has been fractured in its history, so that the one Church of Jesus Christ has no single universal historical expression. In particular, Anglicans understand the Anglican Communion as a family of Churches, all belonging to the One Holy Catholic and Apostolic Church of Jesus Christ.

The Anglican 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, which have the following characteristics in common:

- a. they uphold and propagate the Catholic and Apostolic faith and order as they are generally set forth in the Book of Common Prayer as authorised in their several Churches;
- b. they are particular or national Churches, and, as such, promote within each of their territories a national expression of Christian faith, life and worship; and

<sup>19</sup> Ibid, 8.

<sup>20</sup> *Sacrosanctum Concilium*, 2.

- c. they are bound together not by a central legislative and executive authority, but by mutual loyalty sustained through the common counsel of the bishops in conference.<sup>21</sup>

However, in Anglican understanding, while each Church embodies the fullness of the Church, each Church is in some sense historically contingent.

Our ideal is nothing less than the Catholic Church in its entirety. Viewed in its widest relations, the Anglican Communion is seen as in some sense an incident in the history of the Church Universal. It has arisen out of the situation caused by the divisions of Christendom. It had indeed been clearly blessed of God, as we thankfully acknowledge; but in its present character we believe that it is transitional, and we forecast the day when the racial and historical connections which at present characterise it will be transcended, and the life of our Communion will be merged in the larger fellowship of the Catholic Church. But in order to expound this ideal it is necessary to glance at the principle which, as we believe, underlies the constitution of the Church.

That principle is clear to us. There are two prevailing types of ecclesiastical organisation: that of centralised government, and that of regional autonomy within one fellowship. Of the former, the Church of Rome is the great historical example. The latter type, which we share with the Orthodox Churches of the East and others, was that upon which the Church of the first centuries was developing . . . The Provinces and Patriarchates of the first four centuries were bound together by no administrative bond: the real nexus was a common life resting upon a common faith, common Sacraments, and a common allegiance to an Unseen Head. This common life found from time to time an organ of expression in the General Councils.

The Anglican Communion is constituted upon this principle. It is a fellowship of Churches historically associated with the British Isles. While these Churches preserve apostolic doctrine and order they are independent in their self-government, and are growing up freely on their own soil and in their own environment as integral parts of the Church Universal . . .

The bond which holds us together is spiritual . . . its sense is ecclesiastical and doctrinal . . .

We hold the Catholic faith in its entirety: that is to say, the truth of Christ, contained in Holy Scripture; stated in the Apostles' and Nicene Creeds; expressed in the Sacraments of the Gospel and the rites of the Primitive Church as set forth in the Book of Common Prayers with its various

21 Resolution 49 of the 1930 Lambeth Conference.

local adaptations; and safeguarded by the historic threefold Order of the Ministry . . .

However, while we hold the Catholic Faith, we hold it in freedom. Every Church in our Communion is free to build up its life and development upon the provisions of its own constitution.<sup>22</sup>

There are some fundamental similarities between this vision of the Church and the role of the visible structure and that found in the 1930 Lambeth Conference Appeal. By 1965, both the Anglican Communion and the Roman Catholic Church were taking as their starting point for dialogue a radically spiritual understanding of the Church: a people united in response to God's call.

### Canon law in ecclesial life

In the Roman Catholic tradition, canon law as such belongs to the visible and hierarchical structure of the Church that exists to serve all God's people in their quest for holiness. Vatican II offered its own reflections on the subject of the relationship between the external, juridically organised Church and the mystery of supernatural communion. The key to this relationship is the famous analogy between the mystery of the Incarnate Word and the mystery of the Church:

as the assumed nature, inseparably united to him, serves the divine Word as a living organ of salvation, so, *in a somewhat similar way*, does the social structure of the Church serve the Spirit of Christ who vivifies it, in the building up of the body.<sup>23</sup>

In the Catholic Church, the 1983 Code sought to express many of the insights of the Vatican Council in strictly juridical terms. This is reflected particularly in Book II, *The People of God*: here, before any attention is given to the norms governing hierarchy, authority, processes and the like, the Code addresses the obligations and rights of all the Christian faithful. Such a layout echoes one of the purposes of canon law: that is, to create a framework to assist the faithful exercise their rights and fulfil their obligations. The initial canons of Book II refer to all the faithful; later canons identify the obligations and rights of specific categories within the faithful – laity, clerics, religious and others.

The Code, the product of almost two decades of study and revision, is faithful to one of the principles that underlay the process:

For law, in the mystery of the Church, takes on the nature of a sacrament or sign of the supernatural life of the Christian faithful; it signifies that life

22 Report of Committee IV of the 1930 Lambeth Conference.

23 *Lumen Gentium*, 8, emphasis added.

and promotes it. Of course, not all the juridic norms are aimed directly toward a supernatural end or at directly promoting pastoral care. Yet it is necessary that the Church's law be in harmony with the attainment of the supernatural end by all people. Hence, the laws of the Code of Canon Law must shine forth with the spirit of charity, temperance, humanness, and moderation, which as so many supernatural virtues distinguish the laws of the Church from every human or profane law.<sup>24</sup>

There is no such explicit articulation of the role of canon law in the Anglican tradition. Nevertheless, as set out above, at the 1930 Lambeth Conference the bishops acknowledged that there were elements of the visible and social life of the Church that require regulation. For Anglicans, the appropriate level of this regulation was at the level of the regional Church. Each Church makes provision for its own life, provided that fundamental fidelity to the Catholic faith is maintained.

This means that it is much more correct to refer to Anglican canon laws rather than Anglican Canon Law. There is nothing in the Anglican Communion to parallel the 1983 Code of Canon Law or the 1990 Code of Canons of the Eastern Churches. Nevertheless, as has been mentioned earlier, a great deal of work has been done in recent decades to induce from the laws of the constituent Churches of the Anglican Communion some general principles that are verified in each particular legislation. This task was explicitly encouraged by the Windsor Report of 2004:

Recent years have seen a revival of interest in, and the academic study of, the Canon Law of Anglican churches (their constitutions, canons and other regulatory instruments). In particular, the Primates' Meeting at Kanuga 2001 considered acknowledgement of the existence of an unwritten *ius commune* of the worldwide Anglican Communion, and initiated a process leading to the Anglican Communion Legal Advisers' Consultation in Canterbury (March 2002). The Consultation concluded: there are principles of canon law common to the churches within the Anglican Communion; their existence can be factually established; each province or church contributes through its own legal system to the principles of canon law common within the Communion; these principles have a strong persuasive authority and are fundamental to the self-understanding of each of the churches of the Communion; these principles have a living force, and contain in themselves

24 Pontifical Commission for the Revision of the Code of Canon Law, 'Principles which govern the revision of the Code of Canon Law', (1969) 2 *Communicationes* 79; English translation in JF Hite, GJ Sesto and DJ Ward (eds), *Readings, Cases, Materials in Canon Law: a textbook for ministerial students* (Collegeville, MN, 1980), p 72.

the possibility of further development; and the existence of these principles both demonstrates unity and promotes unity within the Anglican Communion.<sup>25</sup>

The importance of these principles was highlighted in the Windsor Report and in earlier documents of the Anglican Communion:

At their meeting in Canterbury, April 2002, '[t]he Primates recognised that the unwritten law common to the Churches of the Communion and expressed as shared principles of canon law may be understood to constitute a fifth "instrument of unity" . . . to provide a basic framework to sustain the minimal conditions which allow the Churches of the Communion to live together in harmony and unity'. On the primates' recommendation, the Anglican Consultative Council (Hong Kong, September 2002) approved the establishment of the Anglican Communion Legal Advisers' Network 'to produce a statement of the principles of canon law common to the churches, and to examine shared problems and possible solutions'. In October 2003, the primates urged the Network 'to bring to completion' this work. This Commission fully endorses this and strongly recommends completion of the Statement of Principles of Canon Law as soon as possible, and is glad to learn of a Network meeting planned for the end of 2004.<sup>26</sup>

The text of *The Principles of Canon Law* appeared in 2008 and explicitly states the need for law in ecclesial life, as well as the role of law in the service of the Church:

**Principle 1: Law in ecclesial society**

1. Law exists to assist a church in its mission and witness to Jesus Christ.
2. A church needs within its laws to order, and so facilitate, its public life and to regulate its own affairs for the common good.
3. Law is not an end in itself.

**Principle 2: Law as servant**

1. Law is the servant of the church.
2. Law should reflect the revealed will of God.
3. Law has a historical basis and a theological foundation, rationale and end.
4. Law is intended to express publicly the theological self-understanding and practical policies of a church.

25 Lambeth Commission on Communion, *The Windsor Report 2004* (London, 2004), para 113, available at <<http://www.anglicancommunion.org/windsor2004/downloads/index.cfm>>, accessed 17 June 2009.

26 *Ibid.*, para 114.

5. Law in a church exists to uphold the integrity of the faith, sacraments and mission, to provide good order, to support communion amongst the faithful, to put into action Christian values, and to prevent and resolve conflict.<sup>27</sup>

It must be remembered that, in both the Anglican Communion and the Catholic Church, canon law as such functions in the service of the external, visible and social structures of the Church. Canon law mandates, prohibits, encourages, describes, admonishes, teaches, defines, sets limits, declares divine law, articulates, facilitates, enables, and so forth. This multi-faceted activity is a reflection of how the Church lives out its faith and the way in which its faith is expressed. It has been observed that canon law can be a primary source of evidence about the way in which a Church lives out its beliefs.

### **Ecumenical dialogue**

The Anglican Communion, following firmly in the footsteps of the Lambeth Quadrilateral of 1888, articulated its vision in the 'Appeal to all Christian people' from the 1920 Lambeth Conference:

I. We believe that God wills fellowship. By God's own act this fellowship was made in and through Jesus Christ, and its life is in his Spirit. We believe that it is God's purpose to manifest this fellowship, so far as this world is concerned, in an outward, visible, and united society, holding one faith, having its own recognized officers, using God-given means of grace, and inspiring all its members to the world-wide service of the Kingdom of God. This is what we mean by the Catholic Church.

II. This united fellowship is not visible in the world today. On the one hand there are other ancient episcopal Communion in East and West, to whom ours is bound by many ties of common faith and tradition. On the other hand there are the great non-episcopal Communion, standing for rich elements of truth, liberty and life which might otherwise have been obscured or neglected. With them we are closely linked by many affinities, racial, historical and spiritual. We cherish the earnest hope that all these Communion, and our own, may be led by the Spirit into the unity of the faith and of the knowledge of the Son of God. But in fact we are all organized in different groups, each one keeping to itself gifts that rightly belong to the whole fellowship, and tending to live its own life apart from the rest.

...  
 IV[b] The vision which rises before us is that of a Church, genuinely Catholic, loyal to all truth, and gathering into its fellowship all 'who profess and call themselves Christians,' within whose visible unity all the treasures of faith and order, bequeathed as a heritage by the past to the present, shall be possessed in common, and made serviceable to the whole Body of Christ. Within this unity Christian Communion now separated from one another would retain much that has long been distinctive in their methods of worship and service. It is through a rich diversity of life and devotion that the unity of the whole fellowship will be fulfilled.

V. This means an adventure of goodwill and still more of faith, for nothing less is required than a new discovery of the creative resources of God. To this adventure we are convinced that God is now calling all the members of his Church.

VI. We believe that the visible unity of the Church will be found to involve the wholehearted acceptance of:

The Holy Scriptures, as the record of God's revelation of himself to man, and as being the rule and ultimate standard of faith; and the Creed commonly called Nicene, as the sufficient statement of the Christian faith, and either it or the Apostles' Creed as the baptismal confession of belief; the divinely instituted sacraments of Baptism and the Holy Communion, as expressing for all the corporate life of the whole fellowship in and with Christ; a ministry acknowledged by every part of the Church as possessing not only the inward call of the Spirit, but also the commission of Christ and the authority of the whole body.<sup>28</sup>

The purpose of this appeal was to set out the basis or foundation of relationships between the Anglican Communion and other Churches, seeking to recognise in them elements of the one true Church of Christ; this would enable the Anglican Communion to establish with them formal bonds of communion without this being the full communion or visible unity that was so desired. Evident in the appeal – and, indeed, its starting point – is the acknowledgement that the Church is first and foremost a 'fellowship' made in and through Jesus Christ. The life of this fellowship is to be found in the Spirit of Christ. Rather than begin with the visible phenomenon of the Church, the appeal considered the Church first of all from its spiritual, mystical and theological perspective. Of course, it acknowledges that God has manifested this spiritual fellowship in 'an outward, visible and united society'. This is the Catholic Church, and its major identifying features are: one faith,

<sup>28</sup> Resolution 9 from the 1920 Lambeth Conference, available at <<http://www.lambethconference.org/resolutions/1920/1920-9.cfm>>, accessed 17 June 2009.

its own recognised officers, the use of God-given means of grace, and an impetus to inspire all its members to serve the Kingdom of God. It was because this outward reality is not visible today that the appeal went on to set out the principles governing contacts and bonds with other Churches and communions.

The Roman Catholic Church has a much clearer sense of its identity as the expression in history of the One Church of Jesus Christ. In the recent 'Responses of the Congregation of the Doctrine of the Faith to some Questions Regarding Certain Aspects of the Doctrine of the Church',<sup>29</sup> the following explanation was given:

Christ 'established here on earth' only one Church and instituted it as a 'visible and spiritual community', that from its beginning and throughout the centuries has always existed and will always exist, and in which alone are found all the elements that Christ himself instituted. 'This one Church of Christ, which we confess in the Creed as one, holy, catholic and apostolic [...]. This Church, constituted and organised in this world as a society, subsists in the Catholic Church, governed by the successor of Peter and the Bishops in communion with him'.

In number 8 of the Dogmatic Constitution *Lumen gentium* 'subsistence' means this perduring, historical continuity and the permanence of all the elements instituted by Christ in the Catholic Church, in which the Church of Christ is concretely found on this earth.

It is possible, according to Catholic doctrine, to affirm correctly that the Church of Christ is present and operative in the churches and ecclesial Communities not yet fully in communion with the Catholic Church, on account of the elements of sanctification and truth that are present in them. Nevertheless, the word 'subsists' can only be attributed to the Catholic Church alone precisely because it refers to the mark of unity that we profess in the symbols of the faith (I believe ... in the 'one' Church); and this 'one' Church subsists in the Catholic Church.<sup>30</sup>

Nevertheless, while asserting the unique character of the Roman Catholic Church as the Church of Christ, the same answer acknowledges that the Church of Christ is also partially present and active in other Churches and communities in which true elements of sanctification and truth may be recognised. From this point of view, the ecumenical quest becomes remarkably similar to that articulated in the 1920 Lambeth Conference. The recent report of the

29 Issued 4 June 2007, and available at <[http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20070629\\_responsa-quaestiones\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20070629_responsa-quaestiones_en.html)>, accessed 17 June 2009.

30 'Responses of the Congregation of the Doctrine of Faith', response to 2nd question.

International Anglican–Roman Catholic Commission for Unity and Mission (IARCCUM) expressed the quest thus:

Within the context of our agreement on the nature of the Church and its mission, the question must be addressed: where is the Church actually to be found? Anglicans and Roman Catholics agree that there are essential elements, constitutive of ecclesial life, which must be ‘present and mutually recognised’ in each local church, in order for there to be that ‘one visible communion which God wills’. The degree of visible communion depends on the extent of our mutual recognition of the holy gifts and the essential constitutive elements of the Church in one another.<sup>31</sup>

Therefore the ecumenical quest is for Churches to discover whether the essential elements of ecclesial life are present within one another (or whether there can be growth towards the nurture of their presence) and the extent to which they can be mutually recognised.

### **The fruit of canonical dialogue: clarity**

As it exists in the Roman Catholic Church and the Anglican Communion today, canon law is the fruit of reflection on doctrine and practice for almost 2,000 years. This reflection has led to the alteration, updating and abolition of some positive ecclesiastical laws over the centuries – some of which were once considered to be based entirely upon immutable doctrine.<sup>32</sup> As with the 1917 Code, the 1983 Code employs very concise texts with clear rules of interpretation to be applied to a variety of possible circumstances. These texts are often stark in their clarity of expression. This clarity can be said to have a two-fold effect, one positive and one negative:

- i. *Positive*, insofar as it highlights what the parties to the Colloquium can see they have in common, thus allowing them to recognise and appreciate something of the juridical framework and practice of the others;
- ii. *Negative*, insofar as it leads to an emphasis on what the parties to the Colloquium see from very different perspectives, helping them to recognise what separates them from others, and to appreciate what is different in the others but not contradictory.

31 IARCCUM, *Growing Together in Unity and Mission: building on 30 years of Anglican–Roman Catholic dialogue*, para 20, available at <[http://www.vatican.va/roman\\_curia/pontifical\\_councils/chrstuni/angl-comm-docs/rc\\_pc\\_chrstuni\\_doc\\_20070914\\_growing-together\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/angl-comm-docs/rc_pc_chrstuni_doc_20070914_growing-together_en.html)>, accessed 18 February 2009. See also paras 14, 43 and 48.

32 The contents of Canon 844 would have been unthinkable at the time of the 1917 Code of Canon Law. The idea of regulating – let alone permitting – *communicatio in sacris* would have been considered heresy.

Canonical texts in the Churches of the Anglican Communion tend to be much fuller in their text and explain how and when they are or may be used. These broader texts also provide a similar level of clarity.

Of its nature, canon law – whether Anglican or Roman Catholic – properly so called provides a level of clarity that is not always verifiable (or even desirable) in other forms of inter-Church discourse. Law defines limits, outlines boundaries and establishes what is normative within each ecclesial communion. In this way, it can help participants to see what it is they understand and appreciate properly about the ecclesial life and ministry of the others, not from a standpoint of pre-conceptions or misunderstandings from history, but on the basis of what is clear and normative for the faithful within the Anglican Communion and within the Roman Catholic Church.

The activity of the Colloquium in its meetings so far has done much to advance the vision of Vatican II as expressed in *Unitatis Redintegratio*:

We must become familiar with the outlook of our separated brethren. Study is absolutely required for this, and it should be pursued in fidelity to the truth and with a spirit of good will. Catholics who already have a proper grounding need to acquire a more adequate understanding of the respective doctrines of our separated brethren, their history, their spiritual and liturgical life, their religious psychology and cultural background. Most valuable for this purpose are meetings of the two sides – especially for discussion of theological problems – where each can treat with the other on an equal footing, provided that those who take part in them under the guidance of the authorities are truly competent. From such dialogue will emerge still more clearly what the situation of the Catholic Church really is. In this way, too, we will better understand the outlook of our separated brethren and more aptly present our own belief.<sup>33</sup>

What the Council has to say about theology in this context can be applied very properly to canon law:

Sacred theology and other branches of knowledge, especially those of an historical nature, must be taught with due regard for the ecumenical point of view, so that they may correspond as exactly as possible with the facts. It is important that future pastors and priests should have mastered a theology that has been carefully elaborated in this way and not polemically, especially in what concerns the relations of separated brethren with the Catholic Church.<sup>34</sup>

33 *Unitatis redintegratio*, 9.

34 *Ibid.*, 10.

Much of the dialogue between the Anglican Communion and the Roman Catholic Church that took place in the four decades after Vatican II had to do with strictly theological matters. Only in 1999 did canonists begin to take up the challenge in an explicit and sustained manner.

Bearing the exhortation of the Council in mind, it can be stated that one of the most useful dimensions of Canon Law in ecumenical dialogue has been to remind all those engaged in it of the radical existence of the Church as the People of God, the Assembly of all those whom God wishes to call to a life of holiness, a life of intimacy with the Holy Trinity. The Colloquium on initiation and belonging to the Church was a fundamental and radical reminder to all participants of what we share in common. At the root of the Christian life as lived in the Anglican Communion and the Roman Catholic Church lies baptism in Christ and the lifelong quest for holiness. Everything else lies in service of that fundamental vocation.

### **Conclusion**

By making clear what is not always perceived as clear, by setting out boundaries and limits, canon law not only serves as a useful source of norms regulating ecumenical relations but can be seen as an instrument of that very same dialogue. Canon law has helped us to see where we are radically united, and where we have yet to make progress in our journey. That clarity may sometimes be a source of pain and regret, but helps keep all those involved engaged in the enterprise that really matters: the quest to see what we can truly say we have in common, what we must acknowledge as irrevocably different and what is simply a legitimately different expression of something we share.

## THE FUTURE WORK OF THE COLLOQUIUM FOR DIALOGUE

### **Recent developments in general Anglican–Roman Catholic relations**

In May 2000, Dr George Carey, Archbishop of Canterbury, and Cardinal Edward Cassidy, President of the Pontifical Council for Promoting Christian Unity, called a meeting of bishops from both communions at Mississauga in Canada. The purpose of the meeting was to seek a way forward in the continuing relationship between the Anglican Communion and the Roman Catholic Church.

It was a meeting filled with hope for the future relationship between the two communions, and there was a recognition of how much was shared in common in terms of Christian belief and ecclesial life. At the end of the meeting, the bishops called for the establishment of a new body to promote relations between the two communions by seeking to translate the manifest agreement in faith into common life and mission. This commission was mandated to reflect on

what had been accomplished in Anglican–Roman Catholic relations and by ARCIC and to ask what additional steps could be taken to further relations between the Anglican Communion and the Catholic Church. And so IARCCUM was established to prepare a joint declaration of agreement, which, it was hoped, would be signed by Anglican and Catholic authorities, setting out the shared goal of visible unity, an acknowledgement of consensus in faith that has been reached and a fresh commitment to share together in common life and witness.<sup>35</sup>

The initial enthusiasm that marked the meeting in Mississauga and the setting up of IARCCUM has been dampened by internal tensions within the Anglican Communion, particularly with regard to questions of human sexuality and, connected with this, the nature of the Anglican Communion and the bonds that hold the Anglican provinces together.<sup>36</sup> The Anglican Communion has acted to address these difficulties through the work of the Lambeth Commission on Communion, whose *Windsor Report* strongly endorsed a *Koinonia* ecclesiology and made a number of recommendations in relation to the ‘autonomy-in-communion’ enjoyed by Anglican provinces. These included the adoption of an ‘Anglican Covenant’ to make provision for the acknowledgement of a common identity, the relationships of communion, the commitments of communion, the exercise of autonomy-in-communion and the management of communion affairs (including disputes). Discussions on the covenant proposal continue. In March 2009, the Ridley Cambridge draft was produced. In May, the Anglican Consultative Council strongly supported the text but decided that provinces should submit comments on Section 4 of the draft (on the management of Communion disputes) to a small working party of the Covenant Design Group. A report will then be made to the Joint Standing Committee of the Primates and Anglican Consultative Council, which, before the end of 2009, will send out a final text for discussion and formal adoption.

Ecumenical relations have also become more difficult as a result of proposals within the Church of England to move towards the consecration of women to the episcopate.

It was against this background that, in 2007, IARCCUM issued an agreed statement, *Growing Together in Unity and Mission*. It was not an authoritative declaration by the Roman Catholic Church or by the Anglican Communion but rather a statement intended to foster discussion and reflection. In the introduction it states that:

35 See the Mississauga statement ‘Communion in mission’, available at <[http://www.vatican.va/roman\\_curia/pontifical\\_councils/chrstuni/angl-comm-docs/rc\\_pc\\_chrstuni\\_doc\\_20000519\\_iarccum-mississauga\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/angl-comm-docs/rc_pc_chrstuni_doc_20000519_iarccum-mississauga_en.html)>, accessed 18 February 2009; and the ‘Action plan’, available at <[http://www.vatican.va/roman\\_curia/pontifical\\_councils/chrstuni/angl-comm-docs/rc\\_pc\\_chrstuni\\_doc\\_20000519\\_iarccum-action-plan\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/angl-comm-docs/rc_pc_chrstuni_doc_20000519_iarccum-action-plan_en.html)>, accessed 18 February 2009.

36 See IARCCUM, *Growing Together in Unity and Mission*, para 6.

In developing the text of this statement, the International Anglican–Roman Catholic Commission for Unity and Mission (IARCCUM) is well aware that it has not answered the full challenge extended by the bishops at Mississauga; but, ever mindful that Christ continues to urge us towards unity, the Commission has sought to undertake what is appropriate in the present context.<sup>37</sup>

This statement highlights the delicate nature of relations at present and yet acknowledges the desire in both communions to build and foster relations in the best way possible.

Part I of the document, describing the faith that is held in common, explores nine doctrinal areas: God as Trinity; Church as communion and mission; the Word of God; baptism; Eucharist; ministry; authority in the Church; discipleship and holiness; and the Blessed Virgin Mary. Describing what is held in common in each of these areas, it also outlines the significant differences. The relationship between communion and mission runs through and pervades the nine areas.<sup>38</sup>

Part II challenges Anglicans and Roman Catholics to ‘develop those channels and practical expressions of co-operation by which a common life and mission may be generated and sustained’. In doing so, it identifies three areas in which a shared faith may be expressed in action: visible expressions of the shared faith; joint study in order to deepen the shared faith; and expressions of co-operation in ministry and shared witness in the world.

### Recent developments in Anglican canon law

Within the Anglican Communion, canon law is typically expressed on a provincial basis. Despite the existence of comprehensive and illuminating studies comparing the law of the provinces,<sup>39</sup> no attempt has been made previously to deduce common principles that could be said to reflect a shared set of beliefs about the nature of the provisions contained in Anglican canon laws. However, the new initiative of *The Principles of Canon Law Common to the Churches of the Anglican Communion* seeks to identify principles of canon law common to the member churches of the Anglican Communion.

It is important to recognise the limits of this exercise. It does not, in particular, constitute a corpus of canon law applicable to any province of the Communion, let alone the Communion as a whole. Nor is it intended that it should provide the basis for a common legal system for the Communion as a

<sup>37</sup> Ibid, para 8.

<sup>38</sup> B Longley, ‘A commentary on *Growing Together in Unity and Mission: an agreed statement by the International Anglican-Roman Catholic Commission for Unity and Mission (2007)*’, available at <[http://www.vatican.va/roman\\_curia/pontifical\\_councils/chrstuni/angl-comm-docs/rc\\_pc\\_chrstuni\\_doc\\_20070615\\_bishop-longley\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/angl-comm-docs/rc_pc_chrstuni_doc_20070615_bishop-longley_en.html)>, accessed 18 February 2009.

<sup>39</sup> Notably Doe, *Canon Law in the Anglican Communion*.

whole at some stage in the future: a common legal system would be inconsistent with the ‘autonomy-in-communion’ enjoyed by the member provinces, and to adopt such a system would (in addition to giving rise to difficulties from the point of view of the unique situation prevailing in England by virtue of the General Synod’s role as a legislative organ of the state) involve a fundamental change in the character of the Communion.

However, the *Principles* project could have an impact in a number of ways. One consequence could be the promotion of unity within the Communion, by the formal recognition that the *Principles* give to its shared values. More relevantly to the work of the Colloquium, although they are essentially descriptive rather than prescriptive, future discussion of the *Principles* seems likely to encourage reflection both on the extent to which they themselves are consistent with the tenets and practice of Anglicanism and, within individual member provinces, of whether current or proposed local laws are consistent with them. Thus, as the *Principles* claim, they ‘have a strong persuasive authority’ and also ‘have a living force, and contain within themselves the possibility for further development’.<sup>40</sup>

As such, the *Principles* will clearly need to be taken properly into account in the future work of the Colloquium when considering issues that the *Principles* address. Indeed, the form of the *Principles* – expressed, as they are, in the form of general propositions (in contrast to much of the local canon law of the provinces of the Communion, which is based on common law principles) – may stimulate a wider interest in comparison between them and the provisions of the 1983 *Code of Canon Law*. To that extent, the *Principles* seem to represent a potential enrichment of the Colloquium’s work.

### Current issues in the pastoral situation

Issues between Anglicans and Roman Catholics that continue to be encountered in the pastoral context on the ground manifest themselves most clearly in relation to those couples preparing for and living in inter-Church marriages. Although each communion recognises and accepts the baptism of the other, parents still have to make a decision into which Church their children will be baptised and receive first Eucharist and confirmation. When the couple worship together and attend each other’s Churches for Eucharist, they feel the pain of not having full eucharistic sharing. In the light of that, it is no surprise that *Growing Together in Unity and Mission* expressed the view that ‘Of particular concern in the area of ministry is the need to develop joint programmes of pastoral care for interchurch families (including marriage preparation) and to find ways to minister to their concerns.’<sup>41</sup>

40 *Principles of Canon Law*, statement 1.

41 IARCCUM, *Growing Together in Unity and Mission*, para 116.

### Possible areas for future exploration by the Colloquium

In reviewing the ten years of its work, the Colloquium was led to reflect on the very nature and purpose of canon law itself and the extent to which it embodies in substantive form the self-understanding of the two communions, in terms of their mission and their relationship to God. In that connection, the Colloquium was struck by the apparent absence, up to now, of consideration in the formal ecumenical processes of the extent to which canon law has that effect. It therefore identified as a priority for future work a deeper study of the nature and theology of canon law in the life of both the Roman Catholic Church and the Anglican Communion, addressing issues such as its purpose, character, sources and practice.

In the longer term, against the background of the current state of relations between the Anglican Communion and the Roman Catholic Church and the issues that continue to be met in the pastoral context, the Colloquium identified a wide number of other possible areas that could be fruitfully explored.

#### *Baptism*

While the topic of baptism has already been considered, because of its centrality to the common life that is shared by Anglicans and Roman Catholics (noted in *Growing Together in Unity and Mission* as significant and having the potential as a basis for practical initiatives that foster the visible expression of our shared faith), it could be desirable to examine different issues relating to baptism that have not already been studied but that were noted by the Colloquium in 2003 as worthy of consideration. These include:

- i. The nature of Christian baptism and its relation to initiation into ecclesial communion;
- ii. Questions of the combination of ministerial roles and involvement, and the presence of both traditions at the celebration of the sacrament;
- iii. The obligations of the spouse of the other tradition in baptism;
- iv. Questions of joint preparation;
- v. The possibility of ecumenical registration of baptism (given that such canonical problems as arise in connection to baptism do so in connection with registration rather than recognition);
- vi. The role of godparents and sponsors, and the application of the requirement to 'live a life of faith which befits the role to be undertaken', with the possibility of exploring the admission of non-Catholic godparents.

#### *Eucharistic sharing*

Perhaps nowhere is the division or separation between us experienced so clearly as in eucharistic sharing. In the light of that, and the encouragement of *Growing Together* to share in the eucharistic life (while respecting our respective disciplines), it could again be desirable to pursue issues previously identified by the Colloquium as worthy of further exploration. In 2003 it expressed the view that

it would be particularly useful to study Canon 844 of the Latin Code and the nature of the exceptional circumstances in which eucharistic sharing might take place according to its provisions, as well as making an examination of what constitutes 'catholic faith' (Canon 844 §4), especially in the light of the encyclical *Ecclesia de Eucharistia*. Consideration would also have to be given to Canon 205 and the nature of full communion, and to local norms that have been developed following Canon 844. For the fullest interpretation of the positive law, the Colloquium proposed that several strands ought to be investigated, as follows:

- i. The nature of the Eucharist in doctrine and canon law, exploring the respective understandings of Holy Communion, of the nature of orders and of their relationship to eucharistic celebration;
- ii. Comparative discipline, in both canon law and doctrinal documents, concerning questions of mutual admission and mutual exclusion;
- iii. A description of current practice, including questions of the presentation of oneself in conscience for Holy Communion, and the limited impact of questions of reception and local customary law on the positive law;
- iv. A comparison of Roman Catholic and Anglican experiences with those of the Old Catholics and the Orthodox;
- v. The relationship between marriage and family life, and eucharistic sharing.

#### *Other areas*

Further matters identified previously by the Colloquium as ones about which conversations and canonical study could assist the ecumenical process include:

- i. The rights and obligations of all the Christian faithful;
- ii. The law relating to the maintenance of communion between the faithful and the Church;
- iii. The teaching office and the exercise of authority, and, in particular, its relation to conscience;
- iv. The Sacrament of Reconciliation, the granting of faculties and the forms of absolution;
- v. The Sacrament of Anointing;
- vi. The regulation of popular piety, and the treatment of devotional objects;
- vii. The duty to lead a holy life, as applied to clerics, religious, families and single persons;
- viii. The sharing of church buildings and ecumenical activity. Again, this area of work would be relevant to the range of possibilities recommended in *Growing Together* in relation to 'Co-operation in ministry';
- ix. The relationship between secular and canon law.

Additionally, other topics of interest might include:

- i. The possibility of providing guidelines for joint prayer services, especially in relation to the universal Prayer of the Church. This topic would be relevant in relation to the recommendation in *Growing Together* of more frequent shared non-eucharistic worship and, in particular, shared celebrations of daily prayer;
- ii. Possible guidelines or structures for joint devotions to Mary, in the light of the 2005 agreed statement of ARCIC II, *Mary: grace and hope in Christ*;<sup>42</sup>
- iii. Given the increasing number of non-ordained faithful engaging in full-time ministry, the structures for the training, commissioning and ministry of this group of people;
- iv. The impact of the understanding of the human person before God ('theological anthropology') as it affects canonical rules and guidance;
- v. Discipline concerning funerals, burials and cremation.

This list is by no means exhaustive but shows the possibilities of what could usefully be explored, helping to build that communion in mission that is at the heart of *Growing Together*.

### Issues relating to the Colloquium itself

Finally, this is a suitable moment to take stock of the position of the Colloquium itself. A number of issues arises in that connection.

#### *Relationship with other bodies*

The Colloquium is essentially an informal academic forum, comprising scholars and professional canonists and lawyers, having no formal relationship with IARCCUM or any other ecumenical body, or with the Pontifical Council for Christian Unity or the Ecumenical Office of the Anglican Consultative Council, although it has given advice and assistance to IARCCUM on request. The question therefore arises as to whether the Colloquium should be more closely integrated in some way into the existing formal processes and structures for Anglican–Roman Catholic dialogue, whether with IARCCUM or otherwise. It is hoped that some representatives of the above-mentioned bodies could be invited to take part in future Colloquia.

#### *Participation*

After ten years of experience, the Colloquium has taken the opportunity to review its membership. Relevant considerations in that connection include:

<sup>42</sup> ARCIC II, *Mary: grace and hope in Christ*, available at <[http://www.vatican.va/roman\\_curia/pontifical\\_councils/chrstuni/angl-comm-docs/rc\\_pc\\_chrstuni\\_doc\\_20050516\\_mary-grace-hope-christ\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/angl-comm-docs/rc_pc_chrstuni_doc_20050516_mary-grace-hope-christ_en.html)>, accessed 20 February 2009.

- i. The range of legal experience represented within it (including the balance between academics and practitioners);
- ii. The balance between those who have effectively been permanent members and those who might be invited to participate in a particular Colloquium because of some relevant expertise they could bring to it; and
- iii. The representativeness of the membership in terms of its geographical origin (perhaps an issue of greater significance to its Anglican membership than its Roman Catholic membership).

#### *Funding*

The Colloquium has been financed hitherto on an essentially ad hoc basis, drawing on a range of sources of support. It is grateful to those who have generously supported its work. It would of course help the work of the Colloquium greatly to have more secure funding arrangements.

#### *Governance and structure*

The administrative support for the Colloquium has been provided in the main by the Gregorian and Angelicum Universities in Rome and the Centre for Law and Religion at Cardiff University. This has from time to time placed additional burdens on those who already have significant commitments. In principle it would therefore be desirable for the Colloquium to have some kind of permanent secretariat and/or some sort of permanent executive body that is in a position both to take any necessary decisions between meetings and to provide support to those engaged in the work of the Colloquium.