

Law as a Superior Source of Authority

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The Church is a divine institution within a human world. As such it inherently exhibits an element of compromise. Nor is it always easy to reconcile these, at times conflicting, perspectives. Some system of law is required to regulate the structure of the Church, and to set out, at least in broad terms, what its members believe and for what it stands. This is done through a system of law which permeates the whole church, a system which was well-developed in pre-Biblical Israel. The Christian church has inherited, if not the substance of this juridical system, at least some elements of its form. In the Catholic and Orthodox Churches, and those which sprang directly from them and retain a degree of catholicity and orthodoxy, these systems of laws are generally known as canon law. Though this law is framed by man, it has its basis in the divine law, as revealed to the church over time. Some Churches place less emphasis upon the law, but few completely discount the importance of this as an aspect of the church as an institution. But the importance accorded to law within the church varies according to the differing histories and ecclesiological traditions of the respective Churches.

It is therefore unsurprising that canon law shares some of the characteristics of secular law and some of theology. This can lead to a degree of uncertainty as to the nature of canon law. It is seen today in the Church-State debate which has continued in a number of countries. It is also apparent in the ongoing argument over the relative roles of religion, morality, ethics, and politics. If canon law is seen as simply the set of norms of a human society, then it will change according to social and political pressures and circumstances. If canon law is seen as theologically-inspired, because it has supernatural sources and aims, then it will be created, understood, and practised in specifically Christian ways.¹ This can lead to different outcomes, and a different emphasis. This conflict was particularly noticeable over the question of the ordination of women, and in New Zealand, in the creation of separate Maori and European hierarchies. But this tension between secular and spiritual emphases is apparent throughout the Church, and at all times in its history. The difficulty facing the church is that the secular influence is tending to dominate in the more industrialised parts of the Anglican Communion, while it is less noticeable elsewhere. This has led to some tensions in the Church.

In an age which has been marked by the triumph of humanism, it is not surprising that the church too has come to be influenced by the humanist approach. The scope of the divine, unalterable law has been narrowed. Indeed this is hardly surprising in the English context. The triumph of the predominantly secular Parliament over the spiritual Convocation as a consequence of the Reformation in England, and the resultant legislative weakness of the English Church, resulted in the secular laws having considerable influence over church jurisprudence, which ceased to be unique and intellectually self-contained. Not only has its scope narrowed, but its breadth also has been reduced. The broader Anglican Communion has only slowly emerged from the influence of the royal supremacy, and it arguably still

¹ Robert Ombres, "Ecclesiology, Œcumenism and Canon Law" in Norman Doe, Mark Hill and Robert Ombres (eds.), *English Canon Law* (1998) 57; Robert Ombres, "Canon Law and the Mystery of the Church" (1996/7) 2 *Irish Theological Quarterly* 200-212; Christopher Hill, "Bishops: Anglican and Catholic" in Norman Doe, Mark Hill and Robert Ombres (eds.), *English Canon Law* (1998).

suffers from a relative jurisprudential weakness compared to the fullness of the Roman Catholic canon law. This weakness is even more noticeable where the church is not established, for there it lacks the gravitas of the supportive secular legal system. Legal matters were neglected to the extent that that church was reluctant to enforce its eligious teachings over its own members. Orthodoxy and catholicity was thereby threatened.

In England it would seem that the autonomy of the Church is now strengthened rather than weakened by the continued link of Church and State – though this is a controversial question. It would seem that this conceptual legal weakness of authority is gradually changing, and it is apparent that interest in law is increasing in the Anglican Communion as a whole. One of the strengths of the Anglican Communion is its flexibility, and the absence of a centralised constricting legal structure. But that can also be its principal weakness. The lack of a strong juridical tradition, and the subsequent lack of liturgical, ecclesiological or even doctrinal uniformity, presents the greatest challenge for the Church.

The 1978 Lambeth Conference requested the primates to institute a study of authority, its nature and exercise, within the Anglican Communion. The single most important catalyst for this was the ordination of women in some provinces. At the Primates' Meeting at the Kanuga Conference Centre, North Carolina, 2-8 March 2001, it was resolved:

- to explore the common principles by which our Churches are organised beginning with the way we ourselves meet as Primates;
- to enlarge and deepen our theological vision; and
- to collaborate and share our resources in theological education.

Thus, there was to be further study of the authority, doctrinal or canonical authority of the Church. In the following year, at the Primates' Meeting at Canterbury, in April 2002, the canon law common to the churches of the Anglican Communion was recognised as a fifth instrument of Anglican unity. Whilst this is far from an assertion of infallibility or of the existence of a central source of authority within the Church, it does go some way towards a revival of the important normative role of divine law. Perhaps unfortunately for the Anglican Communion, unlike the Latin Church there is no single body of canons. But there are common elements grounded in the *jus canonicum*. It must be the aim of the Anglican Communion to identify these common elements and build upon them. Diversity and inclusivity is all very well and good, but not when the Church begins to lose its cohesion.

The recognition of the importance of the canon law, came at a time that the Anglican Communion as a whole, and the Church in New Zealand in particular, was reassessing its role and nature. This was particularly through it coming face to face with significant moral and cultural questions which directly challenged the received teaching of the Church. The Windsor Report 2004² was as much about authority in the Church as it was concerned with the specific question of the consecration of homosexuals.

There has always been a place for law in the church. Law is needed to maintain spiritual and temporal discipline. Law is not law if it lacks the power to bind, to compel, and to punish. While it would not be correct to define law simply as compulsion or coercion, it is also an error to define law without recognising that coercion is basic to it. To separate power from law is to deny it the status of law. Law must be coercive if it is to lead men to virtue, though it is only in a limited sense that the church has the power of coercion.

² The Lambeth Commission on Communion, *The Windsor Report* (Anglican Communion Office, London, 2004).

Power itself is partly a religious concept, and the god or gods of any system of thought have been the sources of power for that system. The monarch or ruler has a religious significance in part because of his power. Indeed, Christians had always – at least from the fourth century – considered the State a divine institution, recognising and promoting the Christian religion at the centre of its moral identity. When the democratic State gains power, it too arrogates to itself religious claims and prerogatives. Power is jealously guarded in the post-Christian State, and any division of powers in the State, designed to limit its power and prevent its concentration, is bitterly contested. It is not a coincidence that the conflict between church and State reached a climax in Europe in the sixteenth century, at a time when the modern State began to succeed in its claims to a monopoly of man's allegiance.

The law, both criminal and civil, claims to be able to speak about morality and immorality generally. Where it gets its authority to do this and how it settles the moral principles which it enforces, are vital questions. Undoubtedly, as a matter of history, it derives both partly from Christian teaching.³ But the secular law can no longer necessarily rely on doctrine in which citizens are entitled to disbelieve, and even the law of the church is not immune from this destabilising influence. It is necessary therefore to look for some other source of authority.

The law of Western civilisation has been Christian law, but its faith is increasingly humanist. The old law is therefore neither fully understood, nor obeyed, nor enforced. But in a society where the church has ceased to be (or never was) the church of the people, but rather a voluntary association, questions of the divine nature of law remain important within the church. Fundamental questions of competence are perhaps more vigorously fought in these circumstances, for the extent (or existence) of unalterable tenets or laws may be disputed. Whether the church itself should make all its own laws, whether and to what extent these laws are immutable, and whether the church should utilise secular laws, remain vitally important, yet difficult to resolve. This is because a church, composed of men and women, cannot be truly infallible, nor can be, of itself, aware of the entire divine plan. A church must also, though comprising the Kingdom of God upon Earth, reconcile itself to existence alongside secular states and systems. These systems vary from country to country and over time, and so the position of the church varies.

Whatever the apostles were commissioned to do, the church today has the authority to do. However, unlike in the Roman Catholic Church, within the Anglican Communion the question of authority is one which had rarely been directly addressed since the Reformation⁴ – at least until the 1970s. In part this was a consequence of the formal constitutional establishment of the Church of England in England, which allowed theological questions to be masked in secular legal forms, or described in the most general terms.⁵ As the 1922 Commission on Christian Doctrine reported, “The authority of the church arises from its

³ Matthew 28.18:

All authority hath been given unto me in heaven and on earth.

This is then delegated to the church (John 20.21)

As the father hath sent me, even so send I you.

⁴ See however, Stephen Sykes (ed.), *Authority in the Anglican Communion* (1987).

⁵ The formal legal authority was vested in the Crown-in-Parliament; e.g. Act of Supremacy 1534 (26 Hen. VIII c. 1) (Eng.); Act of Supremacy 1558 (1 Eliz. I c. 1) (Eng.).

commission to preach the Gospel to all the world and the promises, accompanying that commission, that the Lord would always be with his disciples, and that the Holy Spirit would guide them into all the truth.”⁶ There is no clear statement of the source of authority of the church, and how it is to be authoritatively interpreted. This is a curious omission given the centrality of teaching to the mission of the church, and the claimed catholicity of the Anglican Communion. But this is perhaps not surprising, given the post-Reformation history of the Church of England, and its Erastian inheritance. The Anglican concept of authority relates directly to the primary function of maintaining the church in the truth. This led to an emphasis upon process rather than on the juridical form. However, questions of the origins and nature of authority cannot always go un-addressed, nor can they always be expressed in vague and general terms without the risk of departing from theological truths.

Every church, although based on what its members believe to be divine revelation, is also a human institution. Theology is concerned with God’s revelation and the church’s teachings, and canon law with the patterns of practice within the community of faith. This law accorded certain privileges and powers to those in positions of authority. But to hold a position of authority among the disciples of Jesus meant to serve others, after the example of the Master.

The church must work within this framework. Whilst it has been observed that “the church can never invent or create doctrine, but it can define or declare them”,⁷ the Constitution of the Anglican Church in New Zealand provides that General Synod may “safeguard and develop its doctrine.”⁸ The difficulty in determining what is doctrine, and what may be changed by national synods, is a question which the Anglican Communion in general has not yet settled. Indeed, it has been said that “[a]s far as the taking of authoritative decisions is concerned there is clearly a vacuum at the centre, whether one chooses to evaluate it positively or negatively”.⁹ This has been both a strength and a weakness of the Anglican Communion.

St. Thomas Aquinas observed that there are two ways human law may be derived from the divine law. It may embody a deduction from principles contained in divine law, or it may be a more particular statement of those principles.¹⁰ But it remains difficult to determine precisely that these laws are. There is a divergence of opinion as to how far a particular Church is competent to alter or abolish laws and customs observed by the Universal Church.¹¹ Anglican ecclesiology recognises that General Councils may pronounce doctrine,¹²

⁶ Commission on Christian Doctrine appointed by the Archbishops of Canterbury and York in 1922, *Doctrine in the Church of England* (1938) 35.

⁷ Edward Norman, “Authority in the Anglican Communion” (1998).

⁸ Const. Preamble (New Zealand). Cf. Article 21 of the *Thirty-Nine Articles of Religion*, enacted in 1562, and confirmed in 1571 by the Subscription (Thirty-Nine Articles) Act 1571 (13 Eliz. I c. 12) (Eng.), which declares that the Church has authority to declare what the Catholic faith is and always has been; see also Richard Hooker, *Of the Laws of Ecclesiastical Polity* ed. Arthur McGrade (1989) Book V, pp. viii, 2.

⁹ Robert Wright, “The Authority of Lambeth Conferences, 1867-1988” in Guy F. Lytle (ed.), *Lambeth Conferences. Past and Present* (1989) 282.

¹⁰ St. Thomas Aquinas, *Summa theologiae* (1963) I-II. xciv. 2.

¹¹ Hubert Box, *The Principles of Canon Law* (1949) 46. Francisco Suarez, *Tractatus de legibus, ac Deo legislatore* (1679) vii. xviii, 6 [the Churches might depart]; Edward Bicknell, *A Theological Introduction to the Thirty-Nine Articles of the Church of England* (1955) 379-383 [they might not].

but is sceptical of the infallibility of any institution or council.¹³ The dispersed authority of the Anglican Communion is spelt out in Report IV of the 1948 Lambeth Conference,¹⁴ in what Sykes calls “the most satisfactory public statement of the Anglican view of authority”.¹⁵ It amounts, in the words of Canon Edward Norman, addressing a later Lambeth Conference, to a “singularity and diversity dependent on modern concepts of representation and limited government, drawn from the practice of secular modern government.”¹⁶ The 1948 Lambeth Conference Report on the Anglican Communion states that authority is both singular in that it derives from the mystery of the divine Trinity, and plural, in that it is distributed in numerous, organically related elements.¹⁷ Elements in authority are an ongoing process of describing the data, ordering them, mediating and identifying them. While descriptive of the nature of the Anglican Communion at mid-twentieth century, it did not afford clear guidance as to whether they were the product of piecemeal and haphazard evolution, or symptomatic of a more fundamental truth.

The church remains influenced by the legacy and tradition of its post-Reformation constitutional relationship with the State in England, even where the church has never been established. The Elizabethan theologian Richard Hooker observed that:

Of God came all of the diverse guides to human conduct, working through the created order (the moral law of reason), through such law as is necessary to govern human societies (positive human law, international law), and through that special revelation provided to correct the imperfections of other laws (the revelations of God in Christ as transmitted in and through scripture and tradition).¹⁸

Hooker viewed the State as authoritative in relation to God’s universe of laws, and specifically in relation to positive human law, such law as encompasses not only the State but also ecclesiastical government, including the authority of bishops.¹⁹ “*Kings* have dominion in *Ecclesiasticall* causes but according to the lawes of the *Church*”.²⁰ The Anglican Communion

¹² The Act of Uniformity 1559 (1 Eliz. I c. 2) (Eng.), which enshrined the Elizabethan Settlement, endorsed the first four œcumenical council – Nicea 325, Constantinople 381, Ephesus 431, and Chalcedon 451 – as the authorities by which heresy would be defined; Stephen Platten, *Augustine’s Legacy* (1997) 29. “That which has been believed everywhere, always and by all” cannot be set aside without destroying the community itself; St. Vincent of Lérins, *The Commonitorium of Vincentius of Lerins* ed. R.S. Moxon (1915), II, 3.

¹³ Edward Norman, “Authority in the Anglican Communion” (1998); Article 21 of the *Thirty-Nine Articles of Religion*, enacted in 1562, and confirmed in 1571 by the Subscription (Thirty-Nine Articles) Act 1571 (13 Eliz. I c. 12) (Eng.).

¹⁴ L.C. 1948, Report IV, “The Anglican Communion”.

¹⁵ Stephen Sykes, *The Integrity of Anglicanism* (1978) ix.

¹⁶ Edward Norman, “Authority in the Anglican Communion” (1998); William Sachs, *The Transformation of Anglicanism* (1993) 2.

¹⁷ L.C. 1948, Report IV, “The Anglican Communion”.

¹⁸ Richard Hooker, *Of the Laws of Ecclesiastical Polity* ed. Arthur McGrade (1989) Book I, pp. xviii, xix; see also Gerald Cragg, *Freedom and Authority* (1975) 98-99.

¹⁹ John E. Booty, “The Judicious Mr. Hooker and Authority in the Elizabethan Church” in Stephen Sykes (ed.), *Authority in the Anglican Communion* (1987) 108-109.

²⁰ Richard Hooker, *Of the Laws of Ecclesiastical Polity* ed. Arthur McGrade (1989) Book VIII, 3.3, cited in John E. Booty, “The Judicious Mr. Hooker and Authority in the

remains influenced by these views of law, although it was never formally established in most of the world in which it is now found. This influence may be seen in the dependence upon secular legislation for certain aspects of church law, particularly trusts and financial administration but also for the enactment of the Church Constitution. It is probably a pragmatic approach and in some cases confers positive benefits upon the church. But it should not be allowed to obscure the deeper truth of divine law. The Church should not be shy about enforcing its religious tenets.

Arguments advanced in the Episcopal Church in the USA, for example, in favour of the ordination or consecration of active homosexuals as priests and bishops, represent one extreme of the continuum between human law and divine law. The Orthodox Church would claim to occupy the opposite end of the spectrum, and the Roman Catholic Church would have a similar position. The Anglican Communion should beware lest it be seen as humanist rather than religious. It is not a secular institution. It is the House of God on earth. Divine law must prevail. Where some uncertainty is found in Scripture tradition supplies the gloss. But we should be cautious, allowing only that which is permitted, and that about which the Bible is silent if it is justified by analogy and is otherwise harmless. But where there is doubt, or where the Bible specifically prohibits or condemns certain activities, then the church has no place embracing or even condoning them. God is a God of love, but He is also the God of the Old Testament, a jealous God, and one who expects certain standards to be maintained. The church law allows us to do so, and to punish transgressors. Failure to enforce these laws risks exposing the Church as a whole to charges of relativism, and weakening its teaching authority.