

**Proceedings of the Thirtieth Anniversary Conference
The Nature and Diversity of Authority in Anglicanism
31 March - 2 April 2017, Trinity Hall, Cambridge**

Themes and Variations: Conference Report and Reflections

Popular acclaim suggests that the thirtieth anniversary conference of the Ecclesiastical Law Society was a success. The location - Trinity Hall, Cambridge and a Eucharist at Clare College on the Sunday - along with some stunning weather all helped. Besides being a notable anniversary for the Society, it was the 500-year anniversary of Luther publishing his 95 theses that prompted the conference theme of “The Nature and Diversity of Authority in Anglicanism”.

Although covering contexts across the diversity of the Church, from traditional parish to the international Anglican Communion, a number of common themes emerged to engage conference participants from six different Provinces of the Anglican Communion (Canterbury, York, Wales, Canada, ECUSA and Australia) and representatives of the recently disestablished Norwegian Lutheran Church, GAFCON and the Roman Catholic Church. These themes included:

- Questions about the locus of authority
- The role of both hard law and soft law
- The need for processes to develop relationship and consensus that enable the law and authority to be accepted rather than imposed
- Hierarchical law and authority versus law by partnership, *societas* or social contract
- What constitutes law
- What constitutes church
- The residual need for hard law as protection and sanctions for breach of the protective role of law

The opening address on the “Theology of Authority” by Rev Dr Sam Wells of St-Martin-in-the-Fields argued that communal authority, mediated by leaders and institutions who were all under God, was replaced at the Enlightenment by individualistic freedom. The move from authority to freedom began with the Reformation theoretically putting the Bible into the hands of all believers. In practice the Bible fell into the hands of Biblical interpreters who, like today's media and multi-national corporates shaped public opinion whilst claiming to reflect it, exercising power and function rather than true authority. Wells appealed for a return to the communal authority of virtue and the truth found in Jesus through the church and the Gospels. The questions that followed explored whether virtues alone are up to

decision-making and the relationship of external and internal authority in conscience, informed by external authority whether divine or legal.

By contrast Sir John Laws, currently the Goodhart Visiting Professor of Legal Science at the University of Cambridge, and Honorary Fellow of Robinson College, spoke as a lawyer with little claim to theology, which he leaves to his wife, New Testament scholar Lady Sophie Laws who also joined us for dinner. In addition, the Society was pleased to welcome as its guest for dinner, the Right Reverend Stephen Conway, Bishop of Ely. Sir John spoke of the authority of law founded in reason; he also argued for reason as essential to the interpretation of scripture and theology, so as to avoid religious fundamentalism. The application of this argument for today's world was readily appreciated.

The uneasy relationships between the authority of law, Parliamentary sovereignty, reason, natural law, theology and ethics was explored in the first substantive paper of the conference through Norman Doe's¹ highly entertaining dramatisation of conversations between canonists, philosophers and common lawyers. The conversation included Gratian, Lyndwood, Pecock, Edward Coke, Richard Hooker, Godolphin, Edmund Gibson, Richards Grey and Burn, Blackstone and Phillimore, and covered 700 years from the Medieval development of canon law to the present day, illustrating the readiness of lawyers to prioritise positive law over natural law and ethical reason, on the basis that 'we will sooner suffer a mischief than an inconvenience...' Natural law as the superior authority, "the participation of the eternal law in a rational creature" gave rise to common law assumptions that positive law was in line with natural law and reason. In practice natural law became a supplementary authority when positive law had nothing to say in a particular case, although the law of God continued to be recognized in some contexts eg "archiepiscopal licences are to be 'not repugnant to the law of God'".

Reflections from Hooker recognized the roles of 'legal order', the eternal law of God, the constraining role of doctrine, positive laws and right reason which, '*probably* draw from the laws of nature and God', 'public approbation' and the power of the church as a body politic to make laws 'as need shall require,' at 'the instinct of the Holy Spirit'. Yet laws, ecclesiastical canons rightly promulgated by clergy in convocation, were still 'termed the deeds of the King,' under Parliament. Thus the 'father of Anglicanism' illustrates the challenges of maintaining a consistent position over the balance between reason, scripture, law and divine, royal and democratic authority and still he leaves scope for discretion to 'relax' the law. The Enlightenment led to the modern priority of positivist legal authority over natural law and the division of law from ethics. Yet, natural law remains alive and well and enjoying a cross-denominational revival in the fields of theology and philosophy.²

¹ Norman Doe, Cardiff University Law School, Authority Ancient and Modern: Natural Law and Legal Positivism in the English Church from the thirteenth to the twentieth centuries

² eg Nigel Biggar, Regius Professor of Moral and Pastoral Theology, Oxford "Behaving in Public: How to Do Christian Ethics" (Eerdmans, 2011) inter alia

Following the sweep of history Stephen Slack's review³ focused on the contemporary Church of England, approaching the authority of law by an examination of the different forms of normative provision made by the Synod. Drawing a contrast between soft law and hard law he outlined the powers under which Canons and Measures are made and the impact of simplification under Reform and Renewal. Under Article 6 of General Synod's constitution, set out in Schedule 2 to the Synodical Government Measure 1969, the 'provision' that can be made by Synod includes:

- Measures, which have the force and effect of Acts of Parliament,⁴
- Canons,
- Orders, regulations and subordinate instruments
- Acts of Synod or other instruments where provision 'by or under a Measure or Canon is not required'.

In addition, Synod can 'consider and express their opinion on any other matters of religious or public interest' including statements of the House of Bishops, as recently explored in the 'take note' debate on human sexuality.

The creation of ecclesiastical law invokes all the agents of authority identified by Hooker, ie the convocations of the Houses of Clergy, episcopal authority in the House of Bishops and the populist authority of lay members of Synod, along with the authority of the Crown. The process of Synodical law-making, which involves First Consideration, the Revision Committee Stage, the Revision Stage in full Synod, Final Drafting and Final Approval, is thoroughly positivist.

The development of 'soft law' in the form of codes of conduct, such as that governing the Clergy Discipline Measure, or guidance such as that of the House of Bishops on Safeguarding, is an emerging trend. Such soft law can have greater or lesser normative force, depending on the legal framework under which it is made and allows for more flexible development and amendment as circumstances change. Looking to the future the Legislative Reform Measure, currently being considered by Synod, will shorten the legislative process in some cases but not detract from Synodical or Parliamentary authority.

International law, both Anglican and secular, lacks a locus of authority or law-making process; members of the communion (or in secular terms, community of nations) are autonomous. Yet to remain one body methods for working together and regulating relationships are needed. Phil Groves, recently of the Anglican Communion Office, provided an extensive paper⁵ considering models for relationships in the International

³ Stephen Slack, Legal Adviser to the Archbishop's Council and Registrar to General Synod - "Forms of authority in today's Church: Legislative authority and soft law in the Church of England"

⁴ Under the Church of England Assembly (Powers) Act 1919

⁵ Rev Canon Dr Philip Groves – "Authority in the Anglican Communion"

communion in the absence of focal authority. Phil reviewed the model of covenanted authority proposed by Global South Anglican and an alternative model of confessionalism and conciliarism proposed by GAFCON. Rejecting those models Phil argued for empowering authority reflecting concepts of *societas* in Roman law and the Enlightenment's social contract.

Challenging Norman Doe's argument that there is no Biblical precedent for a constitutional law of the church Phil argued that the partnerships that Paul sought to develop between churches across the communion of the early church, grounds a non-hierarchical mutual authority for the Provinces of the Anglican communion. Names such as 'mother' or 'older sister' church and 'giving or receiving' church have no place in such mutually empowering churches. The absence of a locus of external authority means there is no place for power or authority to exclude from the communion. The basis of such authority is the autonomy of the partners to deal with their own local difficulties as they see fit for their circumstances but supporting other Provinces where there is mutual agreement about actions that build up the partnership. The authority of scripture as grounding ecclesial history and current ecclesial authority is also emphasized through grounding the model of empowering, mutual authority in Paul's development of relationships within the early church,

In conversation it was agreed that the realities of history and identity inevitably have an impact on how mutual authority is lived and received but that such identities should build mutual accountability not hierarchical authority. A significant strength of such authority is the scope for mutual action in solidarity across international boundaries as witnessed for example in the Church coming together to campaign against apartheid in South Africa. The scope for such witness and solidarity around the five marks of mission, in the face of global crises such as climate change, refugee crises or the criminalization of homosexuality remains possible. However, the need to take a view on exercises of power, whether ecclesial or secular, that infringe Gospel principles points to the lack of a locus of authority for sanctions when the law's protective function is breached.

In the late afternoon the focus returned to the domestic with a presentation from Ric Thorpe, Bishop of Islington⁶ on authority in non-traditional forms of Church. The Bishop's portfolio for church-planting in London Diocese and more widely has overseen 67 Church plants in London between 1985 and 2016. 54 of these plants cross a parish border yet only 20 have required a Bishops Mission Order. Where congregations are planted within a parish or by cross-border parish collaboration no order is needed. One example is a network community at Kings Cross, the fulcrum of three parishes, which attracts young commuters. The Bishop pointed out that church planting is not new and has been marked in other phases of the Church's history, for example nineteenth century urban congregations in tin shacks and mission halls. Various models are now recognized including grafts from an existing congregation, expansion into new areas of housing, extra-parochial network and workplace communities and BMOs. Plants need a permission-giving stance from those in

⁶ Evolving Models of Authority: Church Plants, Bishop's Mission Orders

episcopal authority, so that they are sent on behalf of the institutional Church. The welcome of the local parish is also important. Consultation processes are essential even in settings, such as a BMO, where formal consent is not needed.

Although the BMO legislation and plants within parishes have no formal legal structure or requirement to have wardens or PCCs in practice structures are developed. Even if ecclesiastical law does not require them charity law expects a charity to have trustees. In practice most plants develop structures within ecclesiastical jurisdiction but others use charitable structures such as a Charitable Incorporated Organisation (CIO) to ensure accountability. Such structures, alongside essential Christian practices of worship, welcoming and nurturing new believers and other marks of mission, are the hallmarks of church. Structures enable stability and growth to the point where some plants go on to develop subsequent generations.

A process of simplifying the paperwork is also ongoing to reduce the sorts of administrative burdens that some church planters experience as onerous. Overall, despite Bishop Ric's anxieties, as a self-confessed pusher of legal boundaries, the presentation affirmed the role of law as framing relationships and expectations in any project that seeks to be church. One area where the law may need revision is the Shared Buildings Measure 1969, which pre-dates the BMO and therefore still assumes incumbents and PCCs. This might be addressed under the review of law governing ecumenical relationships that is currently before Synod. The Bishop acknowledged that to date church planting has been an urban phenomenon and will need re-consideration in a rural setting. However, the main obstacles are not legal but relate to the capacity and willingness of congregations to plant, episcopal permission to do so and the vision for a new worshipping community.

The final plenary session on the Sunday morning, picked up the conference themes and questions raised by Saturday afternoon's workshops on episcopal versus synodical authority, soft versus hard law, authority in the traditional parish, new forms of parish and transnational authority. The session began with presentations by panellists speaking from the perspectives of churchwarden, Rector and Archdeacon⁷ and developed into a conversation chaired by Charles Mynors.⁸ Entertaining questions and tales of legal frustration illustrated the need for hard law. Starting with the question of whether an archdeacon can be saved, given centuries long suspicion of their authority, Jane Steen outlined the role as a blend of theology and law. Grounded in priestly vocation and sacraments and tempering the authority of law with the recognition of Christ's authority, the Archdiaconal role is one of 'order and facility', drawing on 1 Corinthians 14:33.⁹ She also spoke of 'leading others more fully to understand and to follow the laws the Church has provided for its sustaining', rather than using sanctions, even if the latter might seem an easier option.

⁷ Perspectives on authority and practice in ministry - Venerable Jane Steen, Archdeacon of Southwark; Rev Canon Lucy Winkett, Rector of St James Piccadilly and a churchwarden and barrister from St Benet's Cambridge

⁸ Chancellor of Worcester and a churchwarden

⁹ "for God is a God not of disorder but of peace." – Thankfully for the conference Eucharist the Archdeacon did not go on to quote the next verse about women staying silent in church!!

Using some dramatic examples Lucy Winkett spoke of the need to develop relationships and build trust in order to earn the authority to lead and enable proper observance of the church's law. There was a consensus between the speakers that soft skills and relationship-building are needed to implement hard law; changing behavior, though it takes time, is more effective in the longer-term than sanctions for breaking the law. Having said which a framework of hard law is essential to protect the vulnerable, promote equality and resolve conflicts. Issues of accountability arise, for example in safeguarding and other disciplinary matters, when dealing with individual clergy, church officers or parishes within a jurisdiction subject to both ecclesial and civic authority.

Unlike the Rector and the Archdeacon, or (in the Church of England) the Bishop or Chancellor, the churchwarden's role and authority are grounded in election by those on the electoral roll of the parish. Although holding the Bishop's licence the declarations made at the Archdeacon's Visitation are simply the confirmation of the electoral authority to act on behalf of the people of the parish. Leadership is also conferred through the exercise of collaborative ministry with the Vicar, in supporting worship and teaching, safeguarding the vulnerable, ensuring correct observance of law particularly concerning the fabric and keeping good order during worship. As with the other contributors to the conversation the need for time and discussion was highlighted in resolving differences and engaging with change.

Themes arising during questions from the floor included the need to ensure that people are operating with the reality of what the law requires, not myths, lore or misrepresentation of law as an excuse for not doing something. This raised the issue of whether, despite the rhetoric, people and churches really do want to change. The need to bring the elephants out of the corners of the room so that they do not cast a passive aggressive authority over decision-making was also noted. One example of passive resistance to change may be the reluctance of congregations to travel to different church buildings, even though people will travel to supermarkets much further away. The unspoken power of identity, place and history also needs to be considered when dealing with allegiance to particular church buildings.

Options like creating larger parishes as recently done in rural Wales and developing the role of the Deanery, for example via CIOs, were also considered. However, resistance to change remains, suggesting that the problem of authority is not the complexity of the law but the people trying to live by it. It was also pointed out that there are practical disincentives to change; the amalgamation of parishes can create fears around the adverse impact of sharing resources and leaders. One of the many Chancellors present suggested that the law can unite parishes behind a project and against the Chancellor as the "fall-guy". The protection of the law can support clergy or PCCs with difficult decisions to make or news to break. This is particularly so in relation to headstones and Churchyard Regulations, an area that was covered in some detail by Ruth Arlow's update on ecclesiastical law.¹⁰

¹⁰ Recent Developments in Ecclesiastical Law Ruth Arlow, Chancellor of Norwich and Salisbury

As usual the conference was underpinned by regular patterns of worship in morning and evening prayer, this year led by Venerable Stephen Taylor, Archdeacon of Maidstone. The concluding Eucharist was held in Clare College Chapel with a service led by Rt Reverend Christine Hardman and a sermon given by Lucy Winkett, which also reflected on authority and where it lies in a world of social media. As Lucy prepared to read the Gospel prior to preaching she sought a blessing from Christine. Seeing a female Bishop blessing a female priest was a significant illustration of one aspect of how the Church has changed in the thirty years since the Society's foundation. Another is the development of the internet which was illustrated by the launch of a new ELS website during the AGM. Two new members were also elected to the Committee at this year's AGM, Rev Canon Adrian Daffern from Oxford Diocese and Frances Godden, Deputy Diocesan Secretary in Ely and Catherine Shelley was re-elected for a third term.

The conference provided much food for thought for the committee and the wider Society to take forward. For those who wish to reflect on them further materials supplied by the speakers and the Conference Programme are also available on the Society's website. Overall it was agreed that there needs to be clarity about authority and law, particularly for those at the sharp end of pastoral practice. Making clear what the law lays down about pastoral, parochial and provincial relationships is halfway to ensuring that the relationships which ground our Christian call and which the law is designed to foster, are fairly and equitably maintained and lived out. The role of education in developing the earned authority of ecclesiastical law and the pressing need to consider the church in rural Dioceses emerged as significant themes for future work.

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18th April 2017