

COMMENT

What is the Personal Ordinariate? Canonical and Liturgical Observations

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Questions have arisen as to the manner of the publication on 9 November 2009 of *Anglicanorum coetibus*, the *Apostolic Constitution Providing for Personal Ordinariates for Anglicans Entering into Full Communion with the Catholic Church*. What is clear is that the views of the Pontifical Council for Promoting Christian Unity, under Cardinal Walter Kasper, were given less weight than ought to be expected and that both the Archbishop of Canterbury and the Archbishop of Westminster were informed at only a late stage.¹ More assuring for the long term, Cardinal Kasper has stated that this provision is not a new form of ecumenism.² Significantly, the Vatican statement following the meeting between the Archbishop of Canterbury and Pope Benedict XVI in Rome on 21 November reiterated ‘the shared will to continue and consolidate’³ the relationship between the Roman Catholic Church and the Churches of the Anglican Communion and noted approvingly that the details of the third phase of ARCIC would be discussed at informal talks with Anglican representatives in the days following the Archbishop’s visit to the Pope. Whatever else the Ordinariate may be, it is not a substitute for that ‘serious dialogue’ established by Archbishop Michael Ramsey and Pope Paul VI which has as its continued goal, despite obstacles ancient and modern, the restoration of ‘complete communion of faith and sacramental life’ between us.⁴

A preliminary observation about the provision itself concerns the constituency to whom the Ordinariate is addressed. In announcing *Anglicanorum coetibus* the Prefect of the Congregation for the Doctrine of the Faith, Cardinal William Levada, spoke of this provision for ‘former Anglicans’. The language of the

1 For critical views from a Roman Catholic perspective, see articles by Nicholas Lash and Michael Walsh, *Tablet*, 14 November 2009.

2 Address at the Pontifical Gregorian University Symposium for the centenary of the birth of Cardinal Johannes Willebrands, 19 November 2009.

3 *Comunicato della Sala Stampa della Santa Sede: Udienza All'Archivescovo di Canterbury*.

4 *Common Declaration*, March 1966.

Apostolic Constitution indeed reflects this. However, press reports of thousands of potential members, especially outside the United Kingdom, seem to reflect the aspirations of networks such as the Traditional Anglican Church, not all of whom were formerly Anglicans at all. Having noted this ambiguity, and some real scepticism about the numbers reported in the media as likely to request this provision, what does the Ordinariate actually provide?

Anglicanorum coetibus has an ecclesiological introduction which touches on the ecumenical vocation of the Roman Catholic Church but the language will be felt to be more than a little triumphalistic. A translated reference to the Church of Christ ‘subsisting’ in the Roman Catholic Church (quoting *Lumen gentium* 8) has been said to be tendentious, though the official Latin version must quote the original.⁵

The term ‘ordinariate’ is not familiar to Anglicans, though the word ‘ordinary’ is indeed common of diocesan bishops or their equivalent and has the same meaning in Roman Catholic Canon Law. Nor is ‘ordinariate’ found as an actual term in the Roman Catholic Code of Canon Law (1983), though it is used for the jurisdictions over military chaplains. Canon 569 – one of the shortest canons – simply states: ‘military chaplains are governed by Special Laws’. In fact provision was already to be found in legislation going back to 1951, replaced in 1986 by Pope John Paul II’s Apostolic Constitution *Spirituali militum curae*. This provided for military ordinariates in various parts of the world, governed by local statutes approved by the Holy See. In announcing the current provision for former Anglicans Cardinal Levada spoke of it as similar to the military ordinariates. The official Vatican commentary on the Apostolic Constitution by Fr Gianfranco Ghirlanda, Rector of the Pontifical Gregorian University, confirms that this was a legislative model used by the Congregation of the Faith in drafting the Constitution. Some have speculated that Fr Ghirlanda might have been a drafter of the text itself. His is certainly the most authoritative commentary on the Constitution.⁶

The term ‘ordinariate’ is defined in the Constitution as ‘juridically comparable to a diocese’ (*Anglicanorum coetibus* I.3). The phrase is identical with the Apostolic Constitution establishing military ordinariates. It means that an ordinariate is comparable *juridically speaking* to a diocese. It does not mean an ordinariate is the same as a diocese because the power of the ordinary is also qualified by being described as *vicarious* and by being *personal* (*Anglicanorum coetibus* V). In Roman Catholic Canon Law a diocesan bishop has ‘ordinary, proper and immediate power . . . for the exercise of his pastoral function’ (Canon 381.1). This reflects the clear teaching of the Second Vatican Council which explains that diocesan bishops are ‘not to be considered vicars’ – representatives – ‘of the Roman Pontiff’, rather they are ‘vicars and legates of Christ’ (*Lumen*

5 See Charles Sherlock, *Church Times*, 27 November 2009.

6 *Vatican Commentary on New Norms for Anglicans*, 9 November 2009 (<<http://www.zenit.org>>).

gentium 27). On the other hand, a vicar general or episcopal vicar, though exercising ordinary jurisdiction, does so by reason of delegation (Canon 131.1 & 2). Co-adjutor or auxiliary bishops technically exercise their authority as a vicar general or episcopal vicar. In these cases ‘ordinary’ authority is exercised vicariously rather than as proper to the office – as is the case with a diocesan bishop. Because the Apostolic Constitution is explicit that the power of the ordinary is ‘vicarious’, the provision does not therefore provide for the establishment of a diocese or diocesan bishop in terms of an inherent, proper, episcopal jurisdiction; it rather provides for a vicarious jurisdiction.

The ‘ordinariate’ is also defined as ‘personal’ (*Anglicanorum coetibus* V.c). The authoritative *New Commentary on the Code of Canon Law*, commissioned by the Canon Law Society of America and compiled by canonists from North America and Europe,⁷ also speaks of military chaplains as ‘the equivalent of pastors of *personal* parishes’. Comparison between the *Anglicanorum coetibus* and *Spirituali militum curae* is therefore instructive in terms of ‘personal’ jurisdiction. Personal means non-territorial – as with all chaplaincy ministry, including Anglican service chaplaincy and other chaplaincy under extra-parochial ministry licences, or even network communities, as with a Bishop’s Mission Order licence. The bounds of ministry and membership of a personal parish are here determined by the person of the pastor rather than territory as in a normal parish. But chaplaincy is also very distinct from normal parish ministry where, in the Church of England, the parish priest has a responsibility for and duties towards the whole community resident in the parish. The priest’s ministry under the Apostolic Constitution will be essentially to a self-defined congregational group – as is the case for other kinds of personal parishes with the Roman Catholic Church under canon 518. Priestly ministry therein will be thus significantly different from that of an English Anglican parish.

Though the term ‘personal’ also occurs in the Code of Canon Law in relation to Personal Prelatures (Canons 294–297), these are essentially clerical institutions or societies and this model was not followed, though there are indications that it was considered.

Personal Ordinariates, being vicarious and directly subject to the Vatican – specifically the Congregation for the Doctrine of the Faith and the other Dicasteries (departments) of the Roman Curia – could lead to differences between the Ordinariate and the local Roman Catholic diocese. The Constitution therefore is clear that they must work together. The Ordinary will be a member of the Episcopal Conference and will be bound by its decisions, only excepting explicit provision in the Constitution. The Ordinary, says Fr Ghirlanda, enjoys ‘legitimate autonomy’ from the local bishop while also

7 JP Beal, JA Coriden, TJ Green (eds), *New Commentary on the Code of Canon Law* (New York, 2000).

exercising his authority 'together with the Diocesan Bishop'. How this is to be worked out is no doubt a matter Roman Catholic Conferences of bishops will be considering carefully. To address this collaboration *Anglicanorum coetibus* also states, following the Complementary Norms published simultaneously with the Apostolic Constitution, that pastors of the Ordinariate are to exercise their ministry in mutual assistance with the pastors of the local Roman Catholic diocese. This is again very similar in language to that establishing military ordinariates. In that case canonists have used the term *cumulative* with reference to the power of the ordinary, though this is not used in *Anglicanorum coetibus*. The Complementary Norms nevertheless spell out the close collaboration which has to exist between the Ordinary and the local bishops and the pastors of the Ordinariate and diocesan clergy. Some of the issues which will arise will have echoes of questions raised in relation to Anglican discussion of *transferred* episcopal authority. This conversation will require a kind of internal ecumenism of some delicacy. Relations between Anglo-Catholic parishes and Roman Catholic parishes are sometimes excellent and close – but not always so. The ecumenical credentials of those former Anglican clergy aspiring to re-ordination in an Ordinariate ought to be part of a discernment process if good relations and collaboration are to be established as envisaged in the Constitution.

The Apostolic Constitution and the Norms provide for the (re-)ordination of former Anglican clergy. The terms used do not suggest conditional ordination and Fr Ghirlanda's official commentary is explicit that ordinations 'will be absolute' on the basis of the Bull *Apostolicae Curae* of 1896 condemning Anglican ministerial orders. A distinction is made between the obligation of celibacy for unmarried men going forward to ordination, described 'as a rule' (*Anglicanorum coetibus* VI.2), and the admission of married men to orders on a case by case basis (*Anglicanorum coetibus* VI.1 & 2). There is essentially no change here, current Roman Catholic discipline allowing for the exceptional admission of married men to the presbyterate. But this dispensation does not extend to the episcopate. The Ordinary may be in episcopal orders but does not have to be (Norms 4.1). Were a former married Anglican bishop to be (re-)ordained in the Roman Catholic Church he could only be ordained (up) to the order of the presbyterate. In this case, though confirmations could be a part of his sacramental ministry (as is common already for priests within the Roman Catholic Church), ordinations could only be conducted by a celibate episcopal Ordinary or by another bishop outside the Ordinariate. The use of Episcopal vesture by former Anglican bishops is, however, to be permitted, though not sacramental episcopal functions.

Candidates for (re-)ordination will be prepared 'alongside other seminarians' but special programmes may be established, much as is the case already (*Anglicanorum coetibus* VI.5). New forms of religious life could theoretically be established (*Anglicanorum coetibus* VII). As implied above, personal parishes (i.e. something like chaplaincies) may be established but only after consultation

with the local Roman Catholic diocesan bishop and with the explicit consent of the Holy See (*Anglicanorum coetibus* VIII.1). In most cases – presumably – buildings will need to be shared with existing Roman Catholic congregations. Once again local collaboration and goodwill will be essential.

Lay people as well as clergy will be received – laity by explicit registration – on the understanding of acceptance of the *Catechism of the Catholic Church*. Questions have been asked by Roman Catholic theologians in England as to why the *Catechism* and not the texts of the Second Vatican Council.⁸ The *Catechism*, of course, includes the teaching of the Roman Catholic Church on issues such as contraception and human sexuality as well as doctrine. Laity and clergy before (re-)ordination will have to have received the Sacraments of Initiation (Norms 5). These are defined in Canon 845 as baptism and confirmation. Confirmation, though not baptism, would need to be (re-)administered as is the present practice.

It is intended that an Ordinariate should be self-financing, the Ordinary having to provide for clergy remuneration (Norm 7.1), including provision for sickness, disability and old age. The Ordinary will discuss with the local Episcopal conference whether resources might be available for this (Norm 7.2). Whether this is feasible or not appears to be recognised by the provision for priests to engage in a secular profession (Norm 7.3). A Governing Council for each ordinariate is envisaged of at least six priests, as well as a Presbyteral Council, a Finance Council and a wider Pastoral Council of the laity. If the provision of *Anglicanorum coetibus* is largely taken up by clergy rather than laity there will be questions here about the weight of such structural provision and even whether there will be sufficient priests to enable these ‘diocesan’ structures to function as intended. On the other hand it is important to note that the Constitution appears to emphasise the importance of the Anglican synodal tradition in a remarkable way. The Ordinary will be required to gain the consent of the Governing Council on admission of candidates to orders, the erection or suppression of parishes and in the formation of clergy (Norms 12.2). This goes significantly *beyond* current Roman Catholic requirements and indeed the role of a Bishop’s Council and Diocesan Synod in the Church of England.

Disciplinary matters will be handled by the diocese in which an ordinary is located, unless he establishes his own tribunal with an appeal mechanism agreed by the Holy See (*Anglicanorum coetibus* XII). Again questions of proportion and scale may arise. More detailed local norms will also be elaborated for any potential Ordinariate within the territory of their respective Roman Catholic Episcopal Conferences.

My concluding observations will be more liturgical than canonical and concern the ‘identity’ of an Ordinariate. The Apostolic Constitution speaks of ‘the

8 See the *Tablet* articles at n 1 above.

liturgical, pastoral and spiritual traditions of the Anglican Communion' (*Anglicanorum coetibus* 3), though nothing further is said about the pastoral and spiritual traditions. There is, however, potentially very positive provision for the ordinariate to celebrate the eucharist, other rites and sacraments and the daily office according to 'the liturgical books proper to the Anglican tradition' (*Anglicanorum coetibus* III). These will, however, need approval first by the Holy See. The intention here is laudable, the Apostolic Constitution speaking of 'a treasure to be shared'. This could lead to, for example, one or more eucharistic prayers having authorisation by the Church of England and the Roman Catholic Church. But the Constitution explicitly does not exclude the use of the Roman Rite.

A perplexing feature of the present situation, at least in England and Wales, must be that the vast majority of any potential Anglican clerical aspirants have been using the Roman Breviary and significant parts, if not the whole, of the Roman Missal for many years. If the Anglican provision were only to be token there will be no treasure shared. But if the provision were to be extensive it will be the first time for many years that some will have used Anglican rites such as Morning and Evening Prayer, or *Common Worship Daily Prayer*, not to speak of the eucharist. It would be more honest and realistic for Roman rites to be the norm if this is what former Anglicans have actually been using. Yet if this is the case, where again is the treasure shared?

Another matter of caution would be the *style* and *ethos* of such 'heritage' liturgy. As some Anglo-Catholics have regretted the jettisoning of pre-Vatican II ceremonial it would be odd if what actually identified an 'Anglican' Ordinariate was an eclectic selection of Tudor English accompanied by pre-liturgical reform ceremonial, neither of which is now characteristic of our two Communion.

My fears here are not without some past foundation. When provision was first made for former Anglicans in the USA under Cardinal Bernard Law some years ago, the resulting authorised eucharistic liturgy was (and remains) peculiar. In Rite I the Liturgy of the Word is genuinely Anglican, being taken largely from the 1928 *Book of Common Prayer* of the Episcopal Church of the USA. The Offertory Rite is however in modern English from the post-Vatican II Roman Missal. With a further change of ethos the eucharistic prayer is then taken from a book called *The American Missal* and described as an old English translation of the traditional Roman Canon. This translation was claimed to be by the Reformer Miles Coverdale when the provision was first published. Behind the claim lay a polemical translation of parts of the Sarum version of the Roman Canon printed in Foxe's *Book of Martyrs*, and designed to show the 'blasphemy' of the Mass. In any case that polemical translation is *not* the one found in the composite rite provided for former Episcopalians and which, in any case, had never had any Anglican authorisation of any kind. Rite II is in contemporary liturgical English. Though it uses a few Anglican forms, the eucharistic prayers are the four eucharistic prayers of the contemporary Roman Rite in their current

international English language form. Once again at the heart of the eucharistic rite there is nothing characteristically Anglican.

If liturgical treasure is indeed to be shared the liturgical forms used must be genuinely Anglican and be used with some integrity. When Cardinal Kasper was asked at the Lambeth Conference 2008 about the possibility of an Anglican Rite Uniate Church he responded immediately in the negative on the absolutely correct grounds that Anglican liturgy was basically western liturgy – a variant of the Western Rite of the Christian Church. This is further confirmed in Fr Ghirlanda's commentary, where he explicitly rules out a 'Ritual Church' on ecumenical grounds.

As has been seen, though the Constitution speaks of pastoral and spiritual tradition it only legislates for liturgy. One major aspect of Anglican patrimony is the tradition of married clergy. It could be argued that this has had considerable effect on Anglican pastoral practice, especially in relation to family questions. Other aspects of our ecclesial life are already common to Anglicans and Roman Catholics but are less susceptible to denominational definition; for example the largely shared musical tradition witnessed to by Anglican and Roman Catholic cathedrals in Great Britain and Ireland. Other traditions already shared include spiritual writings, whether ancient, mediaeval or modern to which Anglicans and Roman Catholics equally turn for renewal and spiritual refreshment either privately or in the wide-spread practice of ecumenically led retreats. There are complex questions ahead in defining what an Anglican patrimony might or might not entail.

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The Failure of Proportionality Tests to Protect Christian Minorities in Western Democracies: *Alberta v Hutterian Brethren of Wilson Colony*

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In 1974, the province of Alberta began to issue drivers' licences with photographs of the licence holder but exempted persons who objected to having their photographs taken for religious reasons from the photograph requirement. At that time the Muslim population of Canada was tiny and it was an unspoken