

Communion and Jurisdiction

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In May 2019 ARCIC III, the current phase of the Anglican–Roman Catholic International Commission met at St George’s Cathedral, Jerusalem.² The commission members (and staff) were entertained to lunch in the Latin Patriarchate by the Apostolic Administrator (now the Latin Patriarch), Archbishop Pierbattista Pizzaballa OFM. On the wall was a photograph which, it was explained, was a picture of the dozen or so bishops in Jerusalem who were in communion with the See of Rome. There were among them Latins or *Roman* Catholics, Greek Melkite Catholics, Maronites, Syrian Catholics and Armenian Catholics. All were present in Jerusalem and its environs and exercising episcopal ministry and jurisdiction. And all were in communion with each other.

Jerusalem is, of course, not a stranger to overlapping or competing jurisdictions. Many Christian churches and denominations have presence there and, for episcopally ordered churches, there are many bishops and dioceses with Jerusalem in their title. Alongside the Latin Patriarch of Jerusalem there is a Greek one and an Armenian one. But the presence of these three is illustrative of the major schisms in the Church – that following the Council of Chalcedon in 451 and the Great Schism of 1054, which, between them, led to the Oriental Orthodox, Eastern Orthodox and Latin streams of Christianity. Though recognising the historicity of each other, they are, nevertheless *not* in ecclesial communion with one another. But the ones in communion with the See of Rome *are* all in ecclesial communion, though jurisdictionally separate. Or are they?

Within the Anglican Communion, divisions over ethical issues have resulted in the creation of new churches that are recognisably Anglican in structure, ordering and liturgy but which are not part of the Anglican Communion. At the same time some member churches of the Anglican Communion have

- 1 This comment is based on the text of a lecture of the same title given as part of the Ecclesiastical Law Society’s London Lecture series on 25 November 2020. The author is grateful to participants at that event for their comments and suggestions.
- 2 The author is the Anglican co-secretary of ARCIC.

declared in various ways that they consider themselves in communion with the new churches and not with the existing ones in a certain place. Yet, even if they do not participate fully, the 41 provinces or member churches of the Communion are fully integrated in the structures: the ‘instruments of communion’ of the Anglican Communion. This raises the possibility of people sitting next to each other in, say, the Anglican Consultative Council, with trustee powers over the funds and work of the Council and the Anglican Communion Office (including me), who, at least on one side, declare themselves to not be in communion with each other. Here we may well have *jurisdiction without communion*.

In the Orthodox world in recent years there has been considerable division over the status of the Church in Ukraine: specifically, the question of whether the Ecumenical Patriarch was within his rights to grant a *tomos* of autocephaly (or self-governance) to the Orthodox Church in the territory of Ukraine. The Russian Orthodox Church claims that Ukraine is part of its canonical territory. This led to a break in ecclesial communion between Moscow and Constantinople and a multiplication of competing hierarchies in Ukraine. Here we have a *dispute over jurisdiction leading to a break in communion*.

There are other churches around the world other than in the Anglican Communion where ethical issues have led to strain and division. Examples include the United Methodist Church (largely present in the USA but with churches in 136 countries³) where ethical differences caused strains in communion which, in turn, are leading to the possibility of a formal split in the denomination. Here we have a *breach of communion leading to a separation of jurisdiction*.

The conclusion to this admittedly confusing introduction is that jurisdiction—which is a method whereby decisions are made, oversight exercised and discipline enforced—is strongly linked to communion—which is essentially a relationship of recognition of churches and people, the community of the baptised, who share a common faith and sacramental life in the service of Christ. This is an area of real dispute and difficulty and one which occupies a great deal of my time. In this comment I am not able to produce any answers or solutions, but perhaps a few explanations and reasons.

ARCIC III

I started with a story about the members of ARCIC visiting the Latin Patriarchate in Jerusalem. The mandate for the third phase of ARCIC was to examine ‘the Church as Communion, local and universal, and how in communion the local and universal Church comes to discern right ethical teaching’. In ARCIC III’s first agreed statement, finalised at Erfurt in Germany in 2017, the

3 See United Methodist Church, <<https://www.umc.org>>, accessed 25 November 2020.

commission had slightly altered the mandate given by Pope Benedict XVI and Archbishop Rowan Williams to include a ‘regional’ level. Thus, the Erfurt statement, *Walking Together on the Way*, examines how each of our communions, the Anglican Communion and the Catholic Church, expresses the relationship of communion at different levels—local, regional and universal. Using the method of receptive ecumenism, an approach developed by one Catholic member of the commission, Professor Paul Murray, the commission encouraged the Churches to look honestly at themselves, to see what there is in their own tradition that might be underdeveloped or overlooked and then to see whether there are ways in which they might learn from the other Church. Interestingly for us, one of the ways in which it was suggested that Anglicans might learn from Catholics is in reflection on ‘diverse communities in full communion with one another in the same region’. In other words, back to what happens in Catholic Jerusalem.

OVERLAPPING JURISDICTIONS

Yet this concept of overlapping jurisdictions has been historically—and is still in the present day—difficult for Anglicans. Let us explore a little further why this might be. Resolution 63 of the Lambeth Conference 1968 was uncompromising in its view of the various Anglican jurisdictions in continental Europe:

The Conference deplores the existence of parallel Anglican jurisdictions in Europe and other areas, and recommends that the Lambeth Consultative Body (or its successor) should give early attention to the problems involved. The Conference recommends that, in any such area where there exists a Church with which we are in full communion, that Church should participate in the consultations.

The underlying principle is that, in generally understood Anglican ecclesiology, there is a strong link between communion and jurisdiction and, in comparison with the Catholic Church, the level (remember local, regional and universal) at which this link is strongest is different. We will come back to this shortly.

When the then-named Protestant Episcopal Church of the United States of America was considering what the heads of agreement might be for the establishment of a relationship of communion, they came up with four, which were then approved by the Lambeth Conference in 1888. The Chicago–Lambeth Quadrilateral became the basis for the approach of Anglican Churches to communion relationships since then. The quadrilateral calls for agreement on four points:

- i. The Holy Scriptures;
- ii. The creeds (specifically the Apostles’ and Nicene Creeds);

- iii. The sacraments of baptism and Holy Communion (including unfailing use of dominical words and elements); and
- iv. The historic episcopate, 'locally adapted in the methods of its administration to the varying needs of the nations and peoples called of God into the Unity of His Church'.⁴

The earliest arrangements of intercommunion were based around these four principles. These agreements were generally between churches in different countries. The Bonn Agreement of 1931 between the Anglican Communion and the Old Catholic Churches of the Union of Utrecht is one such example. The Old Catholics did not have presence outside their European territory but there are chaplaincies of the Church of England's Diocese in Europe and the Episcopal Church's Convocation of American Churches in Europe in that territory. Similar agreements of intercommunion between Anglican Churches (notably the Church of England) and episcopally ordered Lutheran Churches (such as those of Sweden, Estonia and Latvia) in the 1920s and 1930s allowed a relationship of communion based on eucharistic hospitality, mutual participation in episcopal consecrations and occasional exchange of ministers. But, crucially, there was little if any overlap in jurisdiction.

As the twentieth-century ecumenical movement progressed, some other trends in visions of church unity began to become evident. Looking through the World Council of Churches (WCC) Assembly statements from the third quarter of the twentieth century we can see the development of a vision of communion that included jurisdiction. So, in the statement of the Third WCC Assembly in New Delhi in 1961 unity was seen as being made visible

as all in each place who are baptized into Jesus Christ and confess him as Lord and Saviour are brought by the Holy Spirit into one fully committed fellowship, holding the one apostolic faith preaching the one Gospel, breaking the one bread, joining in common prayer, and having a corporate life reaching out in witness and service to all and who at the same time are united with the whole Christian fellowship in all places and all ages in such wise that ministry and members are accepted by all, and that all can act and speak together as occasion requires for the tasks to which God calls his people.⁵

By the Fifth Assembly in Nairobi in 1975 the vision of unity had taken on a new aspect, which we might call jurisdictional. Mary Tanner summarises it thus:

⁴ Lambeth Conference 1888, resolution 11.

⁵ World Council of Churches, *The New Delhi Report* (Geneva, 1961), p 116.

Christians will know they are fully united when they realise at least three basic marks of conciliar fellowship: consensus in the apostolic faith; mutual recognition of baptism, eucharist, ministry and members; and *conciliar gatherings for common deliberation and decision-making*.⁶

The first major church unions involving Anglicans were the United Churches of South Asia. In India, Pakistan and Bangladesh the Anglican Churches dissolved their dioceses in the territory concerned into the new church, with a new structure of dioceses and the jurisdictional and sacramental apparatus of a church. Yet in later years agreements between Anglican and other Churches achieved a relationship of communion, or full communion, without a uniting of the structures of decision-making. Here I think of the Porvoo Communion in northern Europe, the Anglican–Lutheran agreements in North America and the Anglican–Methodist agreement in Ireland. In Ireland, the USA and Canada there are different communities in communion with one another in the same region.

BIBLICAL AND PATRISTIC ROOTS

The link between communion and jurisdiction goes back to the earliest days of the Church. Acts 15 and the Epistle to the Galatians make reference to the apostolic decision-making process in the Council of Jerusalem. A dispute had arisen over the reception of gentile converts in Antioch. The matter was referred to the Apostles present in Jerusalem and a decision made, which settled the matter for the future.

As the Church grew in the early centuries of the post-apostolic age so the system that we would now recognise as dioceses emerged. These dioceses eventually became focused on a particular large or more important see, often based on a metropolitan city: so appeared the concept of the province, with local bishops being in some way dependent on the bishop of the metropolitan see. In the First Epistle of Clement we see a very early example of an intervention by a senior church figure in Rome (traditionally understood to have been the person known as Clement I, Bishop of Rome, but there is debate on this) in the affairs of another church, in this case Corinth. By the time we get to the Council of Nicaea in 325, after the era of persecutions had come to an end, there is a system of sorts in place possibly modelled on the system of provinces in the Roman Empire. The council, which is more famous for its creed which settled various Christological disputes, drew together the bishops of the

6 M Tanner, 'What is faith and order?', 11 August 2009, emphasis added, available at <<https://www.oikoumene.org/resources/documents/what-is-faith-and-order-mary-tanner>>, accessed 23 October 2020.

Church, convened or convoked by the Roman emperor. The bishops present passed a set of canons which touched, inter alia, on relationships within provinces and the need for bishops in their dioceses to refer certain matters to the bishop of the metropolitan see. What is more, it provided for provincial bishops to meet together (Canon 5) and for provinces, and their metropolitans to have authority in their own territory and not to go about ordaining people in or from other provinces (Canons 6 and 16). Alexander Ross, in a very new book, refers to metropolitan authority as ‘not absolute, but is instead balanced by the conventions of a consensual collegiality’.⁷ A few years later, the Synod of Antioch of 341 issued a set of canons which touched on similar topics.

In the Western Church in later centuries the more centralised system of authority and universal primacy grew up based on the See of Rome. This is something with which we are familiar. Metropolitans (often with the title ‘archbishop’) remained, as did provincial structures, sometimes along national lines but not always. We know, of course, that in England there are two provinces, both ancient. Both have metropolitan archbishops. One of these is Primate of England, the other is Primate of All England. But both were subject to appeal to Rome.

ANGLICAN DEVELOPMENTS

Appeals to Rome rose to prominence in sixteenth-century England. The Tudor worldview pushed by Henry VIII was one which on one level was similar to a province-based polity but on another level was different. For Henry the centre of belonging was the nation. The Statute in Restraint of Appeals declared:

Where by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed that this realm of England is an Empire, and so hath been accepted in the world, governed by one Supreme Head and King having the dignity and royal estate of the imperial Crown of the same, unto whom a body politic compact of all sorts and degrees of people divided in terms and by names of Spirituality and Temporality, be bounden and owe to bear next to God a natural and humble obedience . . .⁸

The Tudor vision was of a union of Church and nation, self-contained and not subject to external authority. Communion and jurisdiction were united. I can never agree with myself whether the Reformation ended in 1558, 1603, 1662, 1689, 1847, 1919 or even 1980,⁹ or whether, in fact, it is still going on; I am

7 A Ross, *A Still More Excellent Way: authority and polity in the Anglican Communion* (London, 2020), 23.

8 Now known as the Ecclesiastical Appeals Act 1532, s 1.

9 Respectively, the accession of Elizabeth I, the accession of James I, the Act of Uniformity 1662 and the 1662 version of the *Book of Common Prayer*, the coronation of William III and Mary II, the Bishopric of Manchester Act 1847, the Church of England Assembly (Powers) Act 1919 and the publication of the *Alternative Service Book*.

equally sure that there are opinions on other possible dates when the Reformation finished. However, during the long Reformation, broadly the sixteenth and seventeenth centuries, there was interaction and fellowship between the Church of England and European Protestantism. The Act of Uniformity 1662 settled the question of the exchange of ministers but England generally saw itself as part of the European Protestant club, under the mantra *cuius regio eius religio*—the religion of the realm following the religion of the ruler.

The next stage in the story is the expansion of European religious traditions (and European religious divisions) to other parts of the world through the triple means of imperial conquest, commerce and missionary work. In the Anglican world this led eventually to the formation of churches more or less in the image of the churches in the British Isles (noting the differentiated experiences of those islands' nations and the particular story of the development of the Episcopal Church in the States), in many or most cases with the same *national* hallmarks. Alex Ross points to twin processes of the gradual independence of the nations of the British Empire and the gradual autonomy of the Churches of the Anglican Communion. Furthermore, he criticises the national model as the 'increasingly unchallenged axiom within Anglican Studies that posits the "national church" as the most complete and perfect form of ecclesial organisation'.¹⁰

In a typically 'robust' lecture given at an Ecclesiastical Law Society event at the Lambeth Conference 1998, Edward Norman makes the link between the Anglican Communion and the Commonwealth of nations: 'The Anglican Communion . . . appeared by chance. It was modelled, in fact, on the simultaneous evolution of the British Commonwealth of Nations, and developed out of a very incoherent theory of empire.'¹¹ The national church, with its overtones of sovereignty in and of itself, is a strong image. The nation is autonomous, it is boundaried and it transacts business with other nations by negotiation and treaty. It does not necessarily need other nations for its essential identity. This is not necessarily neat. There are many churches of the Anglican Communion that extend over more than one nation. The ecclesiastical term 'province' is different—it has overtones of being part of something greater. Yet in the Anglican Communion we use the terms 'province' and 'member church' interchangeably. Communion with the See of Canterbury is a requirement for membership and a hallmark of Anglicanism, but this communion does not easily translate to jurisdiction in a postcolonial world of national churches. I did not promise solutions but potential explanations. And I wonder whether some confusion between the concepts of province and nation

¹⁰ Ross, *A Still More Excellent Way*, p 196.

¹¹ E Norman, 'Authority in the Anglican Communion', (1998) 5 *Ecc LJ* 172–187 at 178.

might explain some of the difficulties that Anglicanism has faced in seeking to address difficulties in the relationship between communion and jurisdiction.

CATHOLIC DEVELOPMENTS

In the Catholic Church things developed differently. The central place of Rome and communion with the See of Peter *has* translated into a unified structure of jurisdiction. Papal primacy has the advantage that it provides a node at which different parts of the Church intersect and an umbrella under which varied ecclesial organisations can flourish, united in the common relationship with the centre. Lest that sound a little romantic, ARCIC III has noted that, if not expressed with consultation, collegiality and a recognition of proper local or regional authority, that the ministry of the Bishop of Rome and the Roman curia ‘can appear to be one of centralization rather than being genuinely universal’.¹²

An interesting hallmark of Catholic ecclesiology is the way in which difference and variety function. The Middle Ages saw a great expansion in religious orders, and such orders form a major part of the Church today. The line of authority and accountability of many religious orders is via international organisations to Rome, and specifically to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. The relationship between orders and the dioceses in which they operate is often complex. There is a whole section of the 1983 Code of Canon Law dedicated to religious orders. But religious exist in dioceses, subject to different rules of jurisdiction but in communion with each other, other religious orders and the diocese in which they operate.

As I noted at the beginning, as well as the Latin Church there are other churches in their own right in communion with Rome. Governed by a similar but not identical code of canons and with a congregation in the Roman curia managing the relationship with the Holy See, the Eastern Churches exist in parallel dioceses overlapping with Latin dioceses in many parts of the world. Once again, in communion but with a different structure of jurisdiction.

Lastly, personal ordinariates and ordinariates for such things as military personnel show that in Catholic ecclesiology there is a recognition of a difference between persons and territory. My contention is that this is only possible because of that higher authority, route of appeal (for there *are* disputes) and nodal model of communion provided by a universal primacy.

CONCLUSION

When ARCIC asks Anglicans to explore what it might be to have ‘diverse communities in full communion with one another in the same region’ it is not

12 ARCIC, *Walking Together on the Way* (London, 2018), para 143.

surprising that Anglicans find it difficult. A number of readers of the *Ecclesiastical Law Journal* have spent considerable days that they will never get back trying to solve the conundrums thrown up by disputes in the Anglican Communion and the complicated interaction of communion and jurisdiction. But it has, I suppose, been ever thus. The Archbishop of York of the time stayed away from the first Lambeth Conference in 1867 as he thought it might take on the hallmarks of a synod and try to make decisions.

These issues are genuinely difficult for Anglicans where, I suppose, communion is expressed and experienced globally, and authority and jurisdiction locally, nationally or regionally. But what I know and have seen, to answer a question asked by John Rees in an article in this *Journal* in 1998, ‘The Anglican Communion: does it exist?’, is that it actually does.¹³ It is imperfect and fragile. It faces real questions about what are the real effects of being in communion or not in communion. Red lines are drawn and continue to be drawn. Some primates stay away from meetings; others commit to walking together despite the differences and difficulties. To borrow John Rees’s final words from more than 20 years ago: ‘We hold together, or rather, we believe there is One who hold us together, in “bonds of affection”. Such authority may not be as fragile as it seems.’¹⁴

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13 J Rees, ‘The Anglican Communion: does it exist?’ (1998) 5 *Ecc LJ* 14–17.

14 *Ibid.*, p 17.