

**PRIMATES MEETING, OCTOBER 2003:
SOME LEGAL AND CONSTITUTIONAL CONSIDERATIONS**

Introduction

1.1 At the heart of their work, the authors of *To Mend the Net*¹ endorse the view of the Lambeth Conference 1988 that “authority in the Church works *through* rather than in spite of disagreement”².

1.2 It could hardly be otherwise in a worldwide Christian community characterised as “a learning Church as well as a teaching Church”³. The recent history of Anglicanism has been marked by its willingness to engage with difficult and divisive issues such as birth control⁴, polygamy⁵, divorce⁶ and the ordination of women⁷. Its approach to these issues has been cautious, and marked by patient attention both to the sources of its Christian understanding, and to the reception of its teaching by the whole community of the faithful.

¹ The Most Reverend Drexel Gomez and the Most Reverend Maurice Sinclair, (Ekklesia, 2001)

² *Ibid*, p82 para 3.4. The quotation is from LC Report 1988, p104, para 89. The context is worth quoting, as it contains a succinct summary of Anglican theological method: “...every Christian community must deal with issues which are raised by intellectual, social and political developments in that part of the world in which it is set. Its response to these issues is also part of its interpretation of the Scriptures and of the Word that the Scriptures mediate. Inevitably, then, the operation of authority in the Church involves conflict and disagreement. Indeed it would probably be true to say that authority in the Church works *through* rather than in spite of disagreement. Its primary function is not, then, to provide ahead of time answers to all possible questions, but to ensure that when disagreement occurs it is settled in accord with the principles according to which Christians normally discern the mind of Christ for them: that the solution is rooted in Scripture, consonant with the mind of the Church, and ‘reasonable’ in the sense that it speaks a language the world can understand – that it makes ‘good sense’ even if the sense it makes is unexpected.”

³ Bishop Stephen Neill, *Anglicanism* (Penguin, 1958), p423, where he also comments “not everyone has what it takes to be an Anglican”.

⁴ LC 1908, Resolution 41 to LC 1958, Resolution 115

⁵ LC 1888, Resolution 5 to LC 1988, Resolution 26

⁶ LC 1888, Resolution 4 to LC 1988, Resolution 34

⁷ LC 1948, Resolution 113 to LC 1988, Resolution 1

1.3 The 1988 Lambeth Conference Committee on Dogmatic and Pastoral Concerns expressly addressed the “frequently asked question whether there are any limits to the plurality of interpretations of the Gospel”, and remarked that “the fact that difficulties may arise in some cases does not mean that there are no boundaries”⁸. The Conference in plenary session went on to recommend that the Primates’ Meeting, under the presidency of the Archbishop of Canterbury, should come to exercise “an enhanced responsibility in offering guidance on doctrinal, moral and pastoral matters”⁹.

1.4 The authors of *TMTN*, themselves Primates and writing in advance of the Primates Meeting 2001, trace the origins of this “enhanced responsibility” role for the Primates from a source in Archbishop Donald Coggan’s call for the Primates of the Communion to meet regularly as a “move towards a maturity in the exercise of authority”¹⁰. They see it developing through the 1988 recommendation, to the Lambeth Conference recommendation in 1998 calling for “intervention in cases of exceptional emergency which are incapable of internal resolution within provinces, and giving of guidelines on the limits of Anglican diversity, in submission to the sovereign authority of Scripture and in loyalty to our Anglican tradition and formularies”¹¹.

1.5 The authors then make the novel suggestion that, once the Primates had identified the boundaries of Anglican diversity, and “at least a significant minority of the Primates” had concluded that any proposed change in doctrine or practice in one of the Provinces appeared to exceed those limits, the Primates’ Meeting (having sought to persuade the Province concerned not to take the proposed step), would recommend to the Archbishop suspension from full communion, and recognition in its place of “a jurisdiction whose practice lies within the limits of Anglican diversity”¹².

⁸ LC, 1988, p105, para 90.

⁹ LC 1988, Resolution 18.2 (a)

¹⁰ LC 1978, Report, p124. Coggan envisaged the meetings being for “leisurely thought, prayer and deep consultation” (*Ibid*, p123)

¹¹ LC Report, 1998, Resolution 3.6 (b), p397.

¹² *TMTN*, pp21, 22, paras 3.2 to 3.8.

1.6 What weight should such a recommendation carry? How might such 'suspension' be implemented? Who has authority to recognise new Anglican alignments as constituent parts of the Anglican Communion? The purpose of this paper is to consider the legal and constitutional framework – not as it might be, but as it is – within which in our communion with one another we seek to work out the disagreements, difficulties, limitations and boundaries Anglicans have identified as a necessary part of their ongoing life in Christ.

Provincial Autonomy

2.1 The Anglican Communion lacks any central body which has legal jurisdiction over the whole. This is hardly surprising given that “the growth of Anglicanism has been haphazard and unplanned”¹³. The result, however, is that the network of relationships between the 38 Churches which presently make up the Communion rests, from a legal perspective, on little more than ‘bonds of affection’¹⁴. As Professor Norman Doe puts it, “There is no formal Anglican canon law globally applicable to and binding upon member churches of the Communion. No central institution exists with competence to create such a body of laws”¹⁵.

2.2 On the face of it, therefore, it can look as if every Church in the Anglican Communion is entirely independent of every other Church. That was certainly the immediate legal purpose of the Henrician break from the overriding jurisdiction of the

¹³ Stephen Platten, *Augustine's Legacy* (DLT1997), p59. Platten quotes W M Jacob, *The Making of the Anglican Church Worldwide* (SPCK 1997) “The Anglican Communion at a very basic level ‘just happened’”. Jacob’s book is probably the most accessible historical introduction to the development of the Communion currently available.

¹⁴ The title given to the Anglican Consultative Council’s 7th Meeting in Badagry, Nigeria in 1984. For a brief legal analysis, see *The Anglican Communion: Does it Exist?*, John Rees (1998) 5 *Ecclesiastical Law Journal*, p.14.

¹⁵ Norman Doe, *Canon Law in the Anglican Communion* (Oxford 1998) p339. Doe’s book repays careful study, and presents a formidable distillation of the “very complex and sometimes bewildering set of technical forms [employed] to signify the sources of ecclesiastical regulation” (p.21).

Roman See¹⁶. The Lambeth Conference in 1930, after a visionary and remarkably modern-sounding analysis of the situation as it existed more than seventy years ago¹⁷, asserted that such autonomy was intrinsic to the Catholic faith and order of the earliest centuries: "...the true constitution of the Catholic Church involves the principle of the autonomy of particular Churches"¹⁸.

2.3 As a matter of law, there is no doubt that, in contrast to the Roman hierarchy, but in conformity to the pattern of Eastern Orthodoxy, every Church in the Anglican Communion "is free to build up its life and development upon the provisions of its own constitution"¹⁹.

Interdependence

3.1 But that is not the whole story. Although the Churches of the Communion are autonomous, they are not free of constraints in the way they develop. They are subject to internal constraints, deriving from their recognition of Scripture, the Creeds, Councils of the undivided Church, and historic liturgies and formularies²⁰; and it is an important part of their self-understanding that they are "in communion with the See of Canterbury...[and] bound together not by a central legislative and executive authority, but by mutual loyalty sustained through the common counsel of the Bishops in conference"²¹.

¹⁶ See the Submission of the Clergy Act 1533, etc

¹⁷ "Our Communion has come to occupy a large place in the thought of this Christian world, and provokes questionings as a world-wide institution...Freedom [to develop locally] naturally and necessarily carries with it the risk of divergence to the point even of disruption...We believe in the Holy Spirit. We trust in his power working in every part of Church as the effective bond to hold us together... The future is big with further possibilities." (LC Report, 1930, pp 153-155)

¹⁸ LC 1930, Resolution 48

¹⁹ LC Report, p 154, para 7

²⁰ They are "particular churches *based on a common faith and order*" (LC 1930, Resolution 48; my emphasis)

²¹ LC 1930, Resolution 49

3.2 This emphasis on ‘dispersed authority’²², both theological and structural, internal and external, has meant that the issue of authority is rarely off the agenda at any international gathering of Anglicans. But the authority to which Anglicans appeal when they speak of their communion with each other is not primarily a legal concept, even though it may have aspects that carry legal implications.

3.3 The use of the word 'communion' to describe the relationship between the autonomous Provinces tells us a great deal. It suggests that this is not the kind of contractual or treaty-based relationship that might be described as a 'federation' or 'association'²³. 'Communion' suggests a more intimate, familial or genetic relationship. Bishop David Hamid captures something of this by contrasting the relationship with the means by which it is expressed: "...Communion is sacramental, ecclesial, mystical. The Anglican Communion existed even before we had a Lambeth Conference, and certainly before the ACC or the Primates' Meeting came to be"²⁴.

3.4 Having said that, the interdependence of Anglican Churches around the world does manifest itself in legal ways, notably in mutual recognition by the Provinces of each other's orders, and participation in each other's sacraments. In each case, the provisions contained in each Province's constitution will determine the conditions upon which such recognition and participation are to take place²⁵. A direct legal effect of “being in

²² For an extended recent treatment of the concept of ‘dispersed authority’ see the *Virginia Report* (the report of the Inter-Anglican Theological and Doctrinal Commission, printed in *Being Anglican in the Third Millennium* (Harrisburg, 1997); and, for a more diverse treatment, see Stephen Sykes (ed), *Authority in the Anglican Communion* (Toronto, 1987)

²³ "...We Anglicans have taken this New Testament word to characterise and underpin our relationships with each other. In many African languages, there are words like *utu*, *uhuntu*, *ubuntu* which speak of belonging to one another in a loving, committed, supportive and inclusive sense. This is not unlike what we understand by *koinonia*, communion. It includes generous forgiveness of one another's faults, and, as a result, being open and generous in our relationships". D Hamid, *Church, Communion of Churches, and the Anglican Communion*, (2002) 6 *Ecc LJ* 352, at 356

²⁴ *op cit*, p 369

²⁵ For the Church of England, for example, the recognition of ministry is governed by the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, and admission to ‘membership’ (an odd concept for the Church of England) under the Church Representation Rules. Most Provinces of the Communion have some similar provision for recognising ministers and admitting as communicants visitors from other

communion” is that the exercise of orders does not require fresh admission into the orders of a ‘foreign’ Church, but merely submission upon transfer between jurisdictions to the new Church’s internal discipline: so a priest of the Church of the Province of West Africa does not have to be ordained again in the Church of England in order to hold office in any Diocese in the Province of Canterbury; he merely needs to obtain the Archbishop of Canterbury’s permission to exercise his orders, and licence of the diocesan bishop. Interchangeability of ministries is a key indicator as to whether a state of interdependent communion exists between two Provinces as a matter of law.

3.5 To pursue this example further in the context of the Church of England, the Overseas and Other Clergy (Ministry and Ordination) Measure 1967²⁶ does not give unrestricted power to the Archbishop of Canterbury to "pick and choose" the Churches with which the English Church is in communion. Under Section 6(2), he is required to act collegially, making his decision jointly with the Archbishop of York²⁷. The provision is expressly limited to "the purposes of the Measure"²⁸. It begs the question how the Archbishops are to determine whether a Church is in communion with the Church of England, and does not supply either a simple answer or any mechanism for discovering where the Archbishops should look for an answer. However, it is doubtful whether the Archbishops would act without reference either to the other internal organs of the Church of England (the House of Bishops and the General Synod); nor would it be prudent for them to decide without consultation with the other instruments of unity of the Communion²⁹.

provinces. Doe lists a range of methods (letters dimissory, production of letters of orders, letters of recommendation) by which mutual interchangeability of ministry is effected (*op .cit*, p.353)

²⁶ *Halsburys Statutes*, 4th edition, vol 14, pp429 *et seqq*

²⁷ "6(2) If any question arises whether, for the purposes of this Measure, a Church is in Communion with the Church of England or whether the Orders of any Church are recognised and accepted by the Church of England, it shall be determined by the Archbishops of Canterbury and York, whose decision shall be conclusive"

²⁸ That is to say, in order to determine whether an individual applicant comes from a qualifying Church

²⁹ The process whereby the Church of England has come to regard itself as being in full communion with the United Churches in the Indian subcontinent provides a good example of this interplay between the internal and external counsel taken by the Archbishops before reaching a final conclusion on the matter of

3.6 However, under Sections 1 and 4 of the Measure, the Archbishop of Canterbury is given a wide discretion as a matter of internal discipline to give or withhold permissions to officiate within the Province of Canterbury to those from other Provinces who wish to exercise their orders in any diocese in his Province. An example of the way in which this discretion has operated is in relation to the ministry of women bishops at the time of the 1998 Lambeth Conference. The then Archbishop of Canterbury let it be known that, because of the Church of England's own law on the matter of women's ministry, women bishops from other parts of the Communion would be permitted to exercise their orders as deacons and priests if invited to do so in dioceses they visited, but should not expect to receive his permission to exercise any episcopal function in the Province of Canterbury.

3.7 This example illustrates the way in which "being in communion" can have legal significance within the life of each Province; and how internal discipline can be exercised without issues of communion being raised. Although there was a fundamental difference of polity between the Church of England and the Churches which ordained women as bishops, communion between the Provinces was not in question. In practice, the issue was resolved by mutual respect and self-restraint, with a measure of grace and courtesy on all sides. The internal rules of the Church of England had operated to govern the way in which the women bishops might exercise their ministry whilst they were within the jurisdiction of the Archbishop of Canterbury³⁰.

3.8 The constitutions of many Anglican Provinces, if not all³¹, contain similar provisions enabling decisions to be made as to how clergy from elsewhere may be allowed to minister, or take part in the sacramental life, of their Province. The law may

recognising orders in those Churches, or their communion status; another would be the relationship with the Scandinavian Lutheran Churches, in relation to which there could have been no question of recognising communion status had it not been for the Porvoo Agreement.

³⁰ In the last resort, disciplinary proceedings might have been brought under the Ecclesiastical Jurisdiction Measure 1963, in relation to any bishop in contravention of the Archbishop's direction (OOCM, 1976, s 4(3))

³¹ There is an interesting point here, as to the extent to which provisions which are not expressed may be regarded nevertheless as having legal force, on the basis of an underlying *ius commune* in the Anglican Communion. See N. Doe, *The Common Law of the Anglican Communion* (2003) 6 *Ecc LJ*

give a wide discretion, but like the Archbishops of Canterbury and York, it is likely that the appropriate authorities will consult widely both within and beyond the Province for guidance in deciding who should or should not be recognised and accepted as a minister or to take part in the sacramental life of the Province. In particular, they are likely to have regard to the views of the Communion's own 'instruments of unity', even though these (unlike their own internal bodies) have no strictly juridical status.

'Instruments of Unity'

4.1 The four 'instruments of communion, unity and interdependence'³² are (in historical order) the Archbishop of Canterbury himself, as the pivotal figure in the Communion, its *primus inter pares*; the Lambeth Conferences of Bishops from all Churches of the Communion; the Anglican Consultative Council; and the Primates' Meeting.

Archbishop of Canterbury

4.2 The Archbishop enjoys a primacy of honour within the Communion, though it gives him no jurisdiction, save to the extent that any individual Province may owe some particular duty to refer to him³³. A vivid recent illustration of his lack of intrinsic authority relates to his intervention in the affairs of the Diocese of Karachi (Church of Pakistan) in 2001. He has no jurisdiction whatsoever in that United Church, though it is a full participant in the affairs of the Communion. His intervention was at the request, and under the entire authority of the civil court of Karachi, albeit with the goodwill of the constitution of the ecclesiastical authorities of the Church of Pakistan. The recommendations of the (ecumenical) Commission he established to investigate the

³² Bishop Mark Dyer's more descriptive expansion of the usual phrase 'instruments of unity', in *The Communion We Share* (Morehouse, 2000) p 189.

³³ For example, in Central Africa, he has a back-stop role in the appointment of the archbishop, if the electoral college has failed to appoint (Central Africa Canon 3); the constitution of Jerusalem and the Middle East contains a most unusual provision under which metropolitanical jurisdiction over the whole Province may revert to the Archbishop of Canterbury in certain circumstances.

problem were implemented, not under his direct authority, but under the authority of the civil court.

4.3 Similarly, his assistance to the Province of Rwanda in the mid-nineties, and to the Province of the Sudan throughout much of the last decade of civil war was characterised as a “ministry of support” at the Lambeth Conference in 1998³⁴, not as an exercise of legal authority. He has none in either jurisdiction.

4.4 Nevertheless in his role as one of the four symbols of unity within the Communion, the Archbishop of Canterbury makes decisions which carry considerable weight, in terms of influence, even though they do not have the force of law in the normal sense in which lawyers use the phrase. A particular function in this regard is his role as the host of the Lambeth Conferences (which are called together on his invitation) and as convener of the Primates’ Meeting. These are immensely important symbolic functions, even if in no juridical sense of the word can they be described as having “legal authority”³⁵.

Lambeth Conferences

4.5 It is a commonplace to observe that the Lambeth Conferences were initiated with the clear and articulated expectation that they should have no legal force whatsoever³⁶.

³⁴ LC 1998, Resolution IV, 13(a)

³⁵ Norman Doe identifies a range of regulatory functions within and between individual churches as “quasi-legal”: that is to say, functions which do not have the force of law in a juridical sense, but which are generally accorded respect “as if” they had legal authority. This analysis is helpful for study purposes, but for the purposes of the present discussion, it must be emphasised that “quasi-legal” concepts are not likely to have the force of law. The language needs to be treated with great care. See Doe *op cit*, p.23

³⁶ The background is explained thoroughly in A M G Stephenson, *Anglicanism and the First Lambeth Conference* (SPCK, 1978). As David Hamid points out, “It is important to note that the [first] Conference was seen to be necessary to address an issue which was dividing the Communion. It was seen to be a way to strengthen the unity of the Communion, not through legislative authority, but through the experience of bishops taking counsel together, in the context of prayer and discussion for the good of the whole Church” (*op cit*, p 362)

They are explicitly not to be regarded as councils of the whole Church³⁷, and the status of their Resolutions can only be recommendatory. If all or any part of any Resolution is to be given effect, it must be adopted by the synodical mechanisms of any Province into its own internal rules.

4.6 That is not to say that the Conferences do not enjoy considerable respect within the general counsels of each Province: as Owen Chadwick put it, “meetings start to gather authority if they exist and are seen not to be a cloud of hot air and rhetoric. It was impossible that the leaders of the Anglican Communion should meet every ten years and not start to gather respect; and to gather respect is to slowly gather influence, and influence is on the road to authority. It continued to have that absence of legal authority which some of its founders wanted and which of necessity was denied to them. But in most Churches some of the most important parts of authority are not based upon the law”³⁸.

4.7 As a matter of law, then, Lambeth Conference Resolutions have no binding force in the Provinces of the Communion; but their influence upon the developing life of the Communion is very great indeed, as witness the impact of the 1998 Conference Resolution I.10, in relation to human sexuality issues. Further, participation in a Lambeth Conference is one (but only one) of the signs that a bishop belongs to a Church in the Anglican Communion.

Anglican Consultative Council

4.8 There have been consultative committees of the Communion, at least since 1897³⁹. In its present form, the Anglican Consultative Council originated from a

³⁷ See Article XXI of the Articles of Religion, which provided one of the fundamental objections raised against the possibility of the Lambeth Conferences having legal authority within the Communion

³⁸ in R Coleman (ed) *Resolutions of the Twelve Lambeth Conferences* (Toronto 1992) p.x.

³⁹ LC 1897, Resolution 5

recommendation of the Lambeth Conference 1968⁴⁰. As a matter of law, it is a charity, incorporated under the English Charities Act 1993, with a constitutional structure based on representative membership drawn from each of the Provinces that make up the Anglican Communion.

4.9 One (but again, only one) of the tests of communion between the Provinces is inclusion as one of the Member-Churches listed in the Schedule to the ACC's constitution, and consequent entitlement to send representatives to its meetings. Unlike either the Lambeth Conference or the Primates' Meeting, the ACC speaks with the distinctive voice of lay Anglicans from around the world.

4.10 In order to achieve inclusion in these representative gatherings, a newly formed Province must seek the approval of the Council as a whole at one of its plenary meetings, and its decision must be ratified by a two-thirds majority of the Primates of the Communion⁴¹.

4.11 In 1996, at the request of the then Archbishop of Canterbury, *Guidelines* were drawn up and adopted by the ACC to assist the Archbishop in coming to any decision with regard to recognition of the Communion status of particular Churches and Provinces seeking admission to the Communion⁴². The *Guidelines* speak of "the ACC's view on the eligibility of the applicant body for recognition by the Archbishop of Canterbury as an autonomous Province of the Anglican Communion", emphasising the interplay between the instruments of unity in determining whether any particular Church is to be regarded as a constituent part of the Anglican Communion⁴³.

⁴⁰ LC 1968, Resolution 69

⁴¹ ACC Constitution Article 3(a)

⁴² These are published in *Being Anglican in the Third Millennium*, Report of ACC-10, (Harrisburg, 1997), pp 110, 111

⁴³ *op. cit.*, p 111, *Guideline 9*

4.12 Although it has its own legal status as a fully constituted organisation, the ACC has no formal legal jurisdiction to intervene in the affairs of any individual Province of the Communion. At the height of the difficulties in Rwanda, for example, it added its encouragement to the Archbishop's support for the Province but this was (and could only be) an encouragement the Province to use its own internal legal mechanisms to restructure itself⁴⁴. There was no question of either the Archbishop of Canterbury or the ACC arrogating to themselves any legal authority to intervene in the affairs of that autonomous Province, notwithstanding the depth of its internal difficulties.

Primates' Meeting

4.13 Similarly, the Primates' Meeting, though now convened more frequently than at its inception, has only the authority of those who participate in it. When language is used to the effect that Primates should "bring their Provinces with them", the language is symbolic, not legal. The Primates do not come as delegates with mandated block votes, but as fellow Christian leaders seeking mutual understanding and support in their calling as disciples of the one Lord.

4.14 The Meeting itself does not have a legal constitution, and its practice has been to issue pastoral letters rather than to pass formal resolutions. Like the Lambeth Conferences, however, its influence is immense, notwithstanding its lack of legal authority. Nevertheless, for its deliberations to have any legal effect, individual Primates would have to persuade the synodical bodies in their own Provinces to adopt for themselves any collective view reached by the Primates.

4.15 Again, a good example is provided by the problems in the Sudan in recent years. The joint meeting of the Primates and the ACC in 1993, having received a report of the painful difficulties in that Province, sought to support the Province but carefully used

⁴⁴ "This Council...[urges] the Church leadership, in consequence, in consultation as necessary with the secular authorities, to set in motion legal procedures to elect bishops to those four vacant sees; and as soon as possible after these elections and consecrations, to call a Provincial Synod meeting in order to finalise a Provincial Constitution". (ACC-10, Resolution 15.4)

language which did not claim for itself any power to intervene: Resolution 29 is couched in terms of encouragement, solidarity, and commendation, urging member-churches and the All-Africa Conference of Churches to be alert to the problems and assist in the process of reconciliation⁴⁵.

The Authority of the 'Instruments'

4.16 In considering ways forward in the present difficulties faced by the Anglican Communion, it is important to be clear about the extent to which any of the four instruments of unity can reach conclusions which would have a legally binding effect upon relations within the Communion as a whole.

4.17 The fact is that, within our fellowship of autonomous churches, the concept of any single overarching authority having the legal authority to determine the status of our Churches is alien. Each of the instruments of unity makes its own contribution to determining whether Churches are 'in' or 'out' using slightly different criteria: the ACC applies its *Guidelines*, but these are not ultimately binding on the Archbishop. As in the case of Hong Kong in 1998, the Archbishop can treat a Province as fully part of the Communion long before the Primates give their approval under the terms of the ACC's constitution, to enable it to be listed in the Schedule of Member-Churches.

⁴⁵ "Resolution 29 – Sudan

1. Resolved, that this Joint Meeting of the Primates of the Anglican Communion and the Anglican Consultative Council, urges Member Churches to do everything in their power to draw the attention of their nations to the tragedy of the Sudan, particularly in its religious dimensions, and further
2. Urges the All-Africa Conference of Churches to seek the resolution of the crisis in the Sudan in co-operation with the Organisation of African Unity, and further
3. Commends the Episcopal Church of Sudan for bringing to an end the schism which has existed for six years. The Primates and members of the Anglican Consultative Council are convinced that the unity of the Church in the Sudan is essential in the process of bringing peace and reconciliation in the country and further
4. Expresses solidarity with and prayerful concern for the life of the Episcopal Church of Sudan and the people of that country and finally
5. Encourages the Provinces of the Anglican Communion to do all in their power to help the Episcopal Church of the Sudan materially.

4.18 What is remarkable is the extent to which consensus is achieved, given the different approaches that are being adopted by the 'instruments of unity'.

A Note on 'Episcopal Visitors'

5.1 'Episcopal visitors' are bishops whose role is duly authorised within the Province and / or diocese in which they are to function. Their appointment may be established by rules made by the appropriate body within the relevant jurisdiction, as in the case of the Church of England's Act of Synod 1993⁴⁶. Alternatively, they may be authorised by agreement between the Bishops concerned (or, indeed, a mixture of both, as is the case in a significant number of English dioceses, where the Provincial Episcopal Visitors operate, not by virtue of the authority given them by the Act of Synod, but by commission of the diocesan bishop, as an assistant bishop within his diocese).

5.2 The concept appears to have originated in arrangements adopted by the General Convention of ECUSA in 1988, and was commended as a model by the Lambeth Conference in 1988⁴⁷. The American House of Bishops revisited the same type of provision when it met in Spring 2002.

5.3 Because of the way such arrangements have been established, whether by formal rule or by agreement between proper ecclesiastical authorities, though they may appear ecclesilogically curious⁴⁸, they have clear legal authority (either by legislation or by voluntary agreement) within the constitutional structure of the Provinces concerned⁴⁹.

⁴⁶ The Act established three "Provincial Episcopal Visitors" to serve, one in the northern Province, and two in the southern Province. These Bishops are, technically, suffragan bishops in the Dioceses of York and Canterbury respectively.

⁴⁷ LC 1988, p 119, para 154(c)

⁴⁸ See Rees, *Alternative Episcopal Oversight* in Michael Watts (ed) *Through a Glass Darkly* (Gracewing, 1993) at p131

⁴⁹ Similarly, there are pastoral reasons why certain clergy are deployed to minister inter-provincially (the clearest example being the deployment of military chaplains - British Crown forces, for example, are ministered to by chaplains licensed by the Archbishop of Canterbury, although they serve in all four

5.4 The episcopal visitor strategy is attractive in many ways as a policy for maintaining as high a degree of communion within a diocese or Province as may be achieved in a time of principled disagreement. However, it is probably unsustainable in the longer term: it presupposes ministry to a fairly coherent and well-defined group of objectors, but it is by no means obvious how it could be made to apply in a situation in which further fault-lines began to emerge amongst the group in the episcopal visitor's care.

5.5 In England, the PEVs are all firm and articulate Anglo-Catholics, and only a handful of Evangelical parishes have sought their oversight. In the North American situation, it does not necessarily follow that the ministry of an episcopal visitor appointed for his views on the ordination of practising homosexuals would be able to give credible apostolic leadership to parishes, some of which will be in favour of the ordination of women, and others will oppose women's priestly ministry, and in which a variety of views may be held on issues such as divorce or abortion⁵⁰. In theory, Provinces could make a number of episcopal visitors available to minister to a range of theological opinions. As a matter of law, the appointment of episcopal visitors is a workable way forward, but the wider the range of theological interests that each claim the right to special episcopal oversight, the more the whole arrangement begins to look like congregationalism or consumerism by another name.

5.6 If some recommendation for providing episcopal visitors to meet the present difficulties were to emerge from this Primates' Meeting, it would be important to identify the legal means by which it would be given effect. That is to say, would it be by adoption in the appropriate constitutional forum (as in the case of the Church of England's Act of Synod), or by voluntary arrangement between the Bishop of the diocese

Anglican Provinces in the British Isles, and beyond); again, there are clear lines of legal authority, as well as historical justification, for this exceptional ecclesiological arrangement.

⁵⁰ This is not intended to be a *reductio ad absurdum*: forceful and principled arguments can be made out on each of these issues, but a range of opinion is to be found on them in most 'conservative' as well as 'liberal' parishes

and the proposed episcopal visitor (as has been offered in New Westminster, but not accepted by a number of the parishes concerned). Unless one or other of these courses is taken, intervention by a Bishop from outside the Diocese or Province will certainly result in a degree of ecclesiological confusion, and may well result in litigation⁵¹.

A Note on Parallel and Alternative Jurisdictions

6.1 The Communion is familiar with parallel episcopal jurisdictions. Well-known examples include the four overlapping jurisdictions in Europe (the Church of England's Diocese of Europe, the Convocation of American Churches in Europe, the Lusitanian Church, and the Spanish Reformed Episcopal Church)⁵². There are other examples where clear understandings have been entered into between one Province and another for a variety of reasons, historic or pastoral⁵³.

6.2 As a matter of law, these arrangements are capable of ready explanation. For whatever historical or pastoral reason, a Province has extended its area of operation so that there are now two (or more) bodies operating in the same geographical territory, each claiming to be authentically Anglican, each deriving its immediate legal authority from a different jurisdiction. The legal situation is simple; the practical effect for the faithful is to create confusion; and concern to avoid this difficulty can be traced back in the Catholic

⁵¹ Because, in effect, the unwelcome episcopal visitor would be establishing his own Church in the territory of another bishop, without having any legal authority to do so; and those who sought to join him, unless they left all their ecclesiastical property behind, would be in breach of trust in relation to any church property they took over into their new allegiance. Their former diocese would be likely to sue for its return

⁵² There are five, if the Churches of the Porvoo Agreement are taken into account; or six, if we include the Old Catholics. The Scandinavian Lutheran Churches are in a relationship of full communion with the Anglican Provinces in Britain and Ireland, including the Diocese of Europe, though that agreement does not put them in a relationship of full communion with the other three churches mentioned above. The Old Catholics are understood to be in communion with all the Churches of the Anglican Communion.

⁵³ For example, the United Churches in the Indian subcontinent have arrangements with the Province of Jerusalem and the Middle East whereby some church buildings in the Diocese of Cyprus and the Gulf are made available for ministry to expatriate workers from the Indian subcontinent, under the supervision of an Assistant Bishop from one of the United Churches.

tradition at least as far as the Council of Nicaea in 325. The Lambeth Conference has offered guidance on the matter repeatedly since 1878⁵⁴.

6.3 What is important to note conceptually is that these overlapping Churches are fully-organised, and legally distinct. They are not part of the same Church, even though they may be part of the same Communion. They have had to negotiate their own terms of interchangeability of ministry with each other, just as if they were ministering on opposite sides of the globe instead of opposite sides of the street.

6.4 To find their way into recognition as part of the Communion, a Church made up of former members of an existing Anglican Church would have to satisfy the same criteria as any other Church negotiating its way into the fellowship of the Communion. That is to say, it would have to separate from its parent church on terms which resulted in the transfer of metropolitanical jurisdiction by agreement between the Primate of the “parent” body (as, for example, when the Province of Nigeria emerged from the Church of the Province of West Africa in 1979); and as part of that process of separation, it would be expected to satisfy the tests set out in the ACC *Guidelines* (as to financial viability and other matters) in order to satisfy the Archbishop of Canterbury and the ACC that the new Province would bear all the authentic hallmarks for admission to the Lambeth Conference, Primates’ Meeting and Anglican Consultative Council.

6.5 Unilateral separation of dioceses from their parent body would be unlikely to attract recognition. It would raise immediate questions about the transfer of metropolitanical authority, and about relationships between the breakaway body and its parent body. Certainly, if there were litigation on foot between the parishes or dioceses concerned and the parent body, it would be likely to indicate that there was serious doubt whether, as a matter of law, the “new church” really existed as a separate entity at all, whether it remained part of its parent body (or be in conflict with it). If it had become

⁵⁴ There is a long history of Lambeth Conference Resolutions, encouraging regularisation of the overlapping jurisdictions – see, for example, Recommendation 11 (Encyclical Letter 3.8-14) of the LC 1878. Most recently, their views are expressed in LC1988, Resolution 72, and LC1998, Resolution V.13

legally separate from the parent body, the question would arise whether it had simply become yet another “continuing Church”⁵⁵; if such a church wished to seek recognition as a separate province of the Anglican Communion, and to be admitted to the wider counsels of the communion, it would need to follow the process of negotiation outline above.

A Note on the Singapore and Denver Consecrations

7.1 By contrast with either of these clear legal concepts (episcopal visitors and parallel jurisdiction), the constitutional basis for the consecration of six American priests as bishops in Singapore and Denver in 2000 and 2002 was far from clear. The metropolitan authority for the consecrations was doubtful: Archbishops do not have free-floating authority to act outside the boundaries of the authority given them by the Church of which they are metropolitans. They are themselves “men under authority”. For a bishop to be regularly consecrated as a diocesan or a suffragan, he must be consecrated to an office which exists constitutionally, under the enforceable law of the province concerned. Otherwise, his consecration will be, at best, “irregular”. If he has been lawfully ordained as a bishop within the constitution of the Church concerned, he is bound also to exercise his ministry within the constitutional structure of that Church.

7.2 It is not at all clear how the six American priests consecrated in this way fit into the two Provinces to which they are said to belong; still less is it clear how the congregations to which they minister fit into those Provinces. In what synodical structure do they find representation? How is their life ordered? What is the support and disciplinary structure for their clergy?

7.3 All these questions, and more, were asked at the time of their consecration. The impression was given that these bishops and their congregations were integral parts of the

⁵⁵ The website *Anglicans on Line* has a useful page setting out the details of Churches that have broken away from one or other of the Provinces of the communion, and are considered to be “not in communion”

Provinces of South East Asia or Rwanda (as the case may be). However, it now seems that the umbrella organisation to which they belong is developing a constitutional structure of its own⁵⁶, which would seem to suggest that they are now an autonomous enterprise, separate from either of the two Provinces concerned in their creation⁵⁷.

7.4 If they are duly constituted bodies within the two Provinces, their internal patterns of authority should be fairly clear, even though their relationship with the wider communion may yet be a matter for discussion within the Communion (and part of that discussion will depend upon their compliance with their internal constitutional structures in the Provinces); but if they are not integral parts of those provinces, as seems increasingly to be the case, they will need to negotiate their own terms of recognition with the “instruments of unity” in the way that has been described.

Looking Ahead Together

8.1 As will be clear from this brief summary, although there are distinct areas that can be described as “legal” in the relationship between the Churches of the Anglican Communion, our Churches depend to a very large extent on non-legal or “quasi-legal”⁵⁸ sources to bind them together.

8.2 This brings us back to the terms in which the Bishops’ Meeting in 1998 expressed their encouragement to the Primates’ Meeting to exercise “enhanced responsibility in offering guidance on doctrinal, moral and pastoral matters”. As we have seen, this was a non-judicial recommendation: it is not enforceable, save by the creation of the kind of

⁵⁶ See the *Foundational Documents* on the Anglican Mission in America website, and in particular the section headed *Constitution*; Article III states clearly that “the office of Primate or Presiding Bishop will be filled by one of the diocesan bishops for a term of three years. The Provincial Synod may re-elect the bishop for a total of three terms”.

⁵⁷ Though the process of this separation, like the circumstances of their inception, is far from clear

⁵⁸ in Norman Doe's terms; see *supra*, note 32

overarching legal body that the Communion has always eschewed⁵⁹. It is important to note that the bishops were careful to suggest that the Primates' Meeting should act only "*in sensitive consultation with the relevant Provinces and with the Anglican Consultative Council [and without] interfering with the juridical authority of the Provinces*"⁶⁰.

8.3 In dealing with the matters facing the present Meeting, then, it may be as well to recall the clear and detailed process of consultation, and respect for juridical autonomy, which was in the mind of the Bishops, and which is articulated in this Resolution. If the present Meeting is minded to take up the challenge of the Bishops from 1998, it should hold firmly in mind the caveats, and the call for wider consultation, which they expressed so clearly.

8.4 Further, in another Resolution of the same Conference⁶¹, having noted the Archbishop's personal "ministry of support" in relation to Sudan and Rwanda, the Bishops invited the Archbishop of Canterbury to:

"...appoint a Commission to make recommendations to the Primates and to the Anglican Consultative Council, as to the exceptional circumstances and conditions under which, and the means by which, it would be appropriate for him to exercise an extraordinary ministry of episcopate (pastoral oversight), support and reconciliation with regard to the internal affairs of a Province other than his own for the sake of maintaining Communion within the said Province and between the said Province and the rest of the Anglican Communion".

8.5 To date, no such Commission has been established, and it is possible that this may be one of the reasons why Provinces and individual Primates may have been tempted to

⁵⁹ See *supra*, section 4.5-4.7. The *TMTN* proposal, of course, presupposes precisely the kind of juridical authority to "suspend" which the Bishops were careful to avoid

⁶⁰ LC 1998, Resolution 3.6(c). This part of the recommendation is not followed up by the authors of *TMTN*

⁶¹ LC 1998, Resolution IV.13

“take the law into their own hands”. The present Meeting might wish to revisit that proposal of the Bishops in 1998, and invite the new Archbishop of Canterbury to take that particular proposal of the 1998 Conference further.

8.6 Finally, it may be valuable to undertake some lateral thinking in relation to law, rules and patterns of authority in the life of our Communion. In recent thinking about the form that the Primates’ “enhanced authority” might take, have we allowed ourselves to become so dependent on models based on the law courts or political rallies that we risk losing the art of listening attentively to one another? In a striking passage in *Augustine's Legacy*, Stephen Platten refers to the *Rule of St Benedict*, and to its possible significance as a "signpost in the search for a coherent approach to authority within the Church"⁶². He goes on:

"The aligning of the will individually and corporately with the will of Christ is at the heart. Scripture and tradition are tools which assist us in identifying the direction of the will. The context of liturgy and prayer remind us of the significance of the Book of Common Prayer in setting Anglican patterns. The application of reason within a life of holiness was one of the seminal contributions of the Caroline Fathers. Any pattern of authority that ignores such factors will err.....The Benedictine pattern instead challenges us to understand and practise these models in a manner which demonstrates a true recognition of our interdependence and our acceptance of the beliefs and needs of others within the wider Church. This requires a self-discipline (both corporate and individual), an attitude of listening, and a trust which is as yet only imperfectly manifested both inter-provincially and within separated provinces of the Anglican Communion"

John Rees
Provincial Registrar

Oxford
October 2003

⁶² *op cit.*, p 40