

CHAPTER 1

THE EVOLUTION OF THE PRINCIPLES OF CHRISTIAN LAW

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In November 2013 an invited Christian Law Panel of Experts met at the Venerable English and Welsh College in Rome. It was convened by Professor Mark Hill QC. The participants attended in their personal capacities, not as representatives of their denominations, and on the basis of their expertise in the church law, church order or church polity, of particular Christian churches, namely: Anglican, Baptist, Catholic, Lutheran, Methodist, Orthodox, Presbyterian, and Reformed.¹ Its aim was to explore critically the extent to which different Christian churches share common principles in their laws and other instruments of internal governance, and the ways in which these principles and instruments may contribute creatively to ecumenism. The initiative was inspired directly by recent research on the potential of church law as a unifying force amongst Christian traditions worldwide.² This chapter describes, explains, and evaluates the development of the principles of Christian Law project. It does so by examining: (1) the historical antecedents, that is, the part played by *regulae iuris* and the maxims of church law from the medieval church in the west to beyond the Reformation of the sixteenth century; (2) models used early on by the Panel of Experts, namely: the work of the Colloquium of Anglican and Roman Catholic Canon Lawyers (established in 1999); and that of the global Anglican Communion Legal Advisers Network a document entitled *The Principles of Canon Law Common to the Churches of the Anglican Communion* launched at the Lambeth Conference 2008; and (3) the work of the Panel of Experts, its working methods, the internal organisation of the *Principles of Christian Law* (Rome, 2016), its work with the Director of the Faith and Order Commission, World Council of Churches (Geneva 2017), and the future.³

I. The Historical Models: From *Regulae Iuris* to Principles of Church Law

¹ The Panel of Experts: Convenor: Professor Mark Hill QC (Cardiff University, Pretoria University, King's College, London); Members: Revd John Chalmers (Former Moderator of the General Assembly of the Church of Scotland); Professor Norman Doe (Director, Centre for Law and Religion, Cardiff University); Revd Ken Howcroft (Former President of the Methodist Church in Great Britain); Aidan McGrath OFM (Secretary General of the Franciscan Order); Robert Ombres OP (Blackfriars Oxford, formerly Procurator General of the Dominican Order); Professor Leon van den Broeke (Vrije Universiteit, Amsterdam); Professor Leo Koffeman (Protestant Theological University, Amsterdam); Professor Nikos Maghioros (Aristotle University, Thessaloniki); Anna Trônet (Diocesan Lawyer, Church of Sweden); Revd Dr John Weaver (Former Principal, South Wales Baptist College); Revd Paul Goodliff (Former Head of Ministry at the Baptist Union); Observers: Fr Tony Currer (Pontifical Council for the Promotion of Christian Unity, Vatican); Archbishop Sir David Moxon (Archbishop of Canterbury's Representative to the Holy See); Revd Marcus Walker (Associate Director, Anglican Centre in Rome); Tim Macquiban (Methodist Church); Revd Dr Peter Stevenson (Principal, South Wales Baptist College); Corresponding member: Mary McAleese, formerly President of Ireland.

² N. Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013): Doe was a Panel member as was Professor Leo J. Koffeman, author of the landmark book *In Order to Serve: An Ecumenical Introduction to Church Polity* (Zurich: LIT 2014).

³ See also N. Doe, 'The Principles of Christian Law Project in Context', *Quaderni Di Diritto E Politica Ecclesiastica* (2017) 3-25.

The distinguished legal historian Frederic William Maitland claimed in 1898: ‘When in any century, from the thirteenth to the nineteenth, an English lawyer indulges in a Latin maxim, he is generally, though of this he may be profoundly ignorant, quoting from the Sext’ (a canon law text of 1298).⁴ This section seeks to make sense of this claim in the medieval period, through the Reformation to the Enlightenment. It does so by outlining the enduring appeal of juridical axioms to church lawyers in Europe, across almost one thousand years, and their domestication in English church law. While there is continuity in the spirit of juridical axioms, there has also been change - in the terms used to signify them, in the abandonment of many axioms of the classical canon law, and in the creation of new axioms to meet ever-changing ecclesial needs.⁵

Roman law is the starting point for the medieval development of *regulae iuris* in the canon law of the Latin Church.⁶ The last title of Justinian’s Digest (50.17) is *De diversis regulis iuris antiqui*. Its *regulae* are broadly modelled on popular and literary proverbs, formulated under the influence of techniques in Greek philosophy, and represented ‘traditional authority’ often associated with the work of particular jurists.⁷ A *regula* is ‘a brief exposition of an existing state of affairs: not of such a nature that the law is derived from the rule, but the rule is established by the existing law’; *regulae* are like *causae coniectio* (the outline of a case presented to a judge at trial) and a *regula* ‘ceases to function when it is vitiated in any way’.⁸ *Regulae iuris* are: cited as generally recognized truths or maxims; formulated to express a point concisely; applied and interpreted as rules of law (similar to statutory rules today); understood sometimes as propositions of natural law; and deployed to interpret legislation and legal transactions. For example: in testaments we interpret the will of the testator liberally; in penal causes the milder interpretation is to be used; and, if there are different possible interpretations, the more meritorious is to be adopted.⁹

Medieval civil lawyers debated, for instance, whether a *regula* was derived from law or else was itself law, and whether an exception constituted a separate *regula* or was implicit in the *regula* in question. In turn, the interest of the medieval canon lawyers of the Latin Church in *regulae* reflects their tendency ‘to abstract and generalise the decision found in the Roman legal texts and to make explicit their relation with each other’.¹⁰ In the twelfth century, this occurs in their formulation, use and discussion of *brocards*, freestanding axioms/propositions (*generalia*), presented in legal argument and counter-argument and reconciled in the form of a solution.¹¹ Initially, canonists understood *regulae iuris* not as maxims but as specific rules of law. Gratian explains

⁴ F. Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I* (Cambridge: Cambridge University Press, 2nd Edition, 1898; reprint Liberty Fund: Indianapolis, 2010), 2 vols., 196.

⁵ See N. Doe and S. Pulleyn, ‘The durability of maxims in canon law: from *regulae iuris* to canonical principles’, in T. Harris, ed., *Studies in Canon Law and Common Law in Honor of R.H. Helmholz* (Berkeley: The Robbins Collection, 2015) 303-336.

⁶ For the use by canonists of Roman law sources generally, see R.H. Helmholz, *The Spirit of Classical Canon Law* (Athens and London: University of Georgia Press, 1996) Chapter 1.

⁷ R. Pound, ‘The maxims of equity – I: of maxims generally’, 34 *Harvard Law Review* (1921) 809-836.

⁸ P. Stein, *Regulae Iuris: From Juristic Rules to Legal Maxims* (Edinburgh: Edinburgh University Press, 1966) 1-2.

⁹ Testator: D.50.17, 12; penal causes: D.50.17, 155, 2; interpretation: D.I, 3, 19.

¹⁰ P. Stein, op cit., 131 and 145: they did not confine *regulae* to maxims described as *regulae* in the texts or in the title *de regulis* – any brief rule of law could be a *regula*.

¹¹ G. Evans, *Law and Theology in the Middle Ages* (Routledge: London, 2002) 75; Stein, op cit., 131; e.g. Damasus (at Bologna) compiled his *Brocarda sive regulae canonicae* (c. 1230) with 125 maxims which, after 1234, was revised by Bartholomew of Brescia in his *Brocardica iuris canonici*.

(c. 1140) that “‘Canon” is Greek for what is called “rule” (*regula*) in Latin’: ‘It is called a rule because it leads one aright and never takes one astray. But others say that it is called a rule because it rules, presents a norm for living rightly, or sets aright what is twisted or bent’; and the rule itself may admit its own exceptions.¹² Bernard of Pavia (d. 1213), included in his *Compilatio Prima* (1187-1191), a collection of papal decretals, a title *de regulis iuris*, and his later *Summa Decretalium* could be the canonists’ first full discussion of *regulae*. Influenced by the civilians, he defined *regula* as a maxim as well as *constitutio canonica* (e.g. a monastic rule of life); and all *regulae* have exceptions. Similarly, Bertram Bishop of Metz (1181-1212) sees a *regula* as a ‘universal proposition’ and *regulae* as *causae cum causa coniunctio* - ‘the joining of one principle with another’ - and for him *causa* means a principle or *ratio*.¹³

Two landmarks in the development of canonical *regulae* were the *Liber Extra* (or *Gregorian Decretals*), which consists of five books produced at the direction of Pope Gregory IX (1227-41),¹⁴ and the *Liber Sextus*, also five books, compiled at the direction of Pope Boniface VIII (1294-1303) and promulgated in 1298.¹⁵ There are eleven *regulae iuris* at the end of the fifth book of the *Liber Extra* and eighty-eight in the last title of the *Liber Sextus* (which itself may be the work of Dinus Mugellanus).¹⁶ Scholars are in broad agreement about the nature and purposes of these *regulae*. First, they are, variously: ‘moral proverbs’;¹⁷ ‘judicial maxims’;¹⁸ ‘fundamental laws in the form of axioms’; ‘an exposition of several laws on the same subject, conclusions or deductions, rather than principles of law drawn from constitutions or decisions’; ‘general rules or principles serving chiefly for the interpretation of laws’;¹⁹ and ‘common sense’.²⁰ Secondly, a *regula* may be descriptive (rooted in previous cases) or prescriptive (designed to resolve new cases).²¹ Thirdly, some *regulae* apply to specific matters (e.g. benefices), others generally (e.g. ‘No one can be held to the impossible’; ‘Time does not heal what was invalid from the beginning’; and ‘What one is not permitted to do in his own name, he may not do through another’);²² and many derive from the Digest, other parts of Roman law, the *generalia* or *brocards*.²³

Particular use was made of *regulae* in teaching canon law, both to sum up the law and to resolve contradictions.²⁴ Maxims were also used to determine when a narrow or a wide interpretation of law was appropriate; for example: ‘It is fitting that odious things be restricted and favourable ones extended’; ‘A general concession does not include those particular items which one would not likely have included’; and: ‘In obscure

¹² Gratian, *Decretum*, Dist. III, Part 1, c. 1 and c. 2.

¹³ P. Stein, op cit., 144, 147.

¹⁴ J. Brundage, *Medieval Canon Law* (Longman: London and New York, 1995) 196-7: it was the work of Raymond de Penyafort (d.1275); Stein, op cit., 145.

¹⁵ J. Brundage, op cit., 197-8; the title is in X.5.12; it was compiled by a committee of canonists.

¹⁶ P. Stein, op cit., 149 (Sext, hereafter VI).

¹⁷ P. Stein, op cit., 145, e.g. X.5.41 reg. jur. 3: it is better to allow scandal than to abandon truth.

¹⁸ R.H. Helmholz, *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s, The Oxford History of the Laws of England*, Volume 1 (Oxford: Oxford University Press, 2004) 154.

¹⁹ A. Meehan, ‘*Regulae iuris*’, *The Catholic Encyclopaedia*, Vol. 12 (New York: R. Appleton, 1911).

²⁰ G. Evans, op cit., 76.

²¹ M.B. Carosi, ‘Some notes on the problem of *regulae iuris* in the history of law’, 10 *Annuario di emeneutica giuridica* (2005) 305-312.

²² VI.1 (benefices), 6 (impossibility), 18 (time), 47 (doing in one’s own name).

²³ P. Stein, op cit., 145.

²⁴ R. Pound, op cit., 817. See also D.M. Owen, *The Medieval Canon Law: Teaching, Literature and Transmission* (Cambridge: Cambridge University Press, 1990) 7.

matters, the least severe solution is to be followed'.²⁵ The work of English canonist William Lyndwood (d. 1446) also includes maxims which have a home-spun flavour: 'Let him who has not been punished in his pocket be punished in his body'.²⁶ In sum, as Roscoe Pound puts it, the canonical maxims 'help to lead the jurist from a body of hard and fast rules, authoritatively imposed, above question and subject only to interpretation, to a conception of principles of reason, discoverable by juristic theory and philosophy, of which particular positive rules were but declaratory'.²⁷

At the time of the Reformation, the continental civilians and canonists of the sixteenth and seventeenth centuries continued to use *regulae iuris*.²⁸ This 'axiomisation' of law has been understood to express a quest both for a purer and earlier understanding of law, and for simplicity of method in applying and in learning the law - law students at most major European universities studied the Digest *regulae* as part of their formal training.²⁹ There are, in turn, commentaries on the *regulae* of canon law,³⁰ studies on individual *regulae*,³¹ compilations for laymen,³² as well as collections of *brocards*, sometimes presented as 'axioms' (*axioma*).³³ Various understandings of *regulae* continued. For example: for Nicolaus Everardus (d. 1532), all statements in civil and canon law which are preceded by the words *plerumque* (generally) or *semper* (always) are regarded as *regulae*;³⁴ and for Sebastiano Medicis (1586): 'A *regula* is a general and brief definition and statement, whereby, in a succinct communication, many similar cases are summarised, not to give expression to a special law, but to convey the *ratio* of those cases'.³⁵ Some jurists compared *regulae* with other legal forms; for instance: *lex*, derived from factual situations, has 'incontrovertible authority', whereas a *regula*, derived from law, has 'probable authority', i.e. as 'a formulation of the accumulated wisdom of jurists explaining and commenting on the law';³⁶ and some commentators equate *regulae* with, for instance, *prima principia iuris* or *axiomata*.³⁷

The termination of papal jurisdiction and the establishment of the Church of England meant neither the demise of civilian learning nor the abandonment of *regulae iuris* in English ecclesiastical jurisprudence in the sixteenth-seventeenth centuries. Richard Hooker deployed 'first principles', 'maxims' and 'axioms' (many from the Sext).³⁸ Church court practice abounds in the use of maxims, such as, statutes in derogation of

²⁵ J. Brundage, op cit., 169-170: VI.15; VI.81; VI.30; VI.34 (borrowed from D.50.17, 80).

²⁶ *Provinciale*, p. 321: *qui non luit in bursa, luet in corpore*.

²⁷ R. Pound, op cit., 819.

²⁸ For maxims in the jurisprudence of the Reformers, see J. Witte, *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002) 164-165.

²⁹ D. van der Merwe, 'Regulae iuris and the axiomisation of the law and in the sixteenth and early seventeenth centuries', 3 *Journal of South African Law* (1987) 286-302 at 288.

³⁰ E.g. Petrus Peckius (1529-1589), *Ad regulas iuris canonici commentaria elaboratissima* (1570).

³¹ E.g. Diego Covarruvius (1512-1577), *Regulae, Peccatum. De regulis iuris libro sexto relectio* (1558), a commentary on the rule *peccatum non dimittitur, nisi restituatur ablatum* - 'a sin is not forgiven unless what has been taken away is restored' (VI.4).

³² E.g. Thomas Murner (1475-c.1534), *Utriusque iuris tituli et regulae* (1518).

³³ E.g. Augustinho Barbaros (d. 1649), *Axiomatum iuris usufrequentiorum expositio* (1631).

³⁴ *Topica legalia* (1516) - in the 1581 edition, under the title *Loci argumentorum legales*, at 72.

³⁵ *Tractatus de regulis iuris* in his *II Tractatum* (1586) 2 par. 10.

³⁶ E.g. Vigelius, *Methodus regularum utriusque iuris* (1584) 9-10; Giphanius (1534-1604) *Tractatus de diversis regulis iuris antiquae utilissimus* (1607) 12-13.

³⁷ D. van der Merwe, op cit., 297-298.

³⁸ See N. Doe, 'Richard Hooker: priest and jurist', in M. Hill and R.H. Helmholz, eds., *Great Christian Jurists in English History* (Cambridge: Cambridge University Press, 2017) 115-137 at 123.

the canonical *ius commune* are to be interpreted strictly, and suit must be brought in the forum of the defendant.³⁹ Their use is also common in commentaries written for practitioners, such as John Godolphin's *Repertorium Canonicum or Abridgement of the Ecclesiastical Laws of this Realm* (1678) where 'material points...are succinctly treated' and 'rules of canon law' are set out – for instance, a vacant benefice must be filled within six months; and, an archdeacon must carry out a visitation in person.⁴⁰

In England, the eighteenth century saw publication of numerous practitioner works on the law applicable to the Church of England. Two may be noted here for their use of 'maxims'. However, there is little in many of these maxims that is proverbial, or that has an obvious link with natural law or reason; most have a particularity more reminiscent of rules rather than general principles. At the start of the century, there is, for instance, Edmund Gibson, and his *Codex Juris Ecclesiastici Anglicani, or, The Statutes, Constitutions, Canons, Rubrics and Articles of the Church of England* (1713); a work 'methodically digested', this was intended 'for the service of the clergy, and in support of the rights and privileges of the Church', and treats 'the Rules of Common and Canon Law'.⁴¹ It uses 'maxims' throughout, often in Latin,⁴² sometimes to support a particular 'rule',⁴³ across various fields of ecclesiastical law, including the royal supremacy in church affairs,⁴⁴ and subjection of clergy to statute.⁴⁵ Occasionally, he presents a proposition as 'a known maxim of the canon law',⁴⁶ or 'a rule of the canon law'.⁴⁷ Toward the end of the century, there is Richard Burn and his *Ecclesiastical Law* (1763).⁴⁸ Time and again Burn uses a 'rule of law', 'general rule', or 'rule of the canon law',⁴⁹ for instance: 'the rules which the ancient canon law hath laid down' provide that the election of a cathedral chapter must be in accordance with cathedral statutes; and: that 'A church once consecrated cannot be consecrated again', is a 'general rule of the canon law'.⁵⁰ These 'rules of law' Burn distinguishes from legal 'maxims' which may be found in Roman law, canon law and common law; thus, he refers to: 'a maxim in law';⁵¹ 'a maxim in the temporal law and...applied to the ecclesiastical law';⁵² a 'known

³⁹ R.H. Helmholz, *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s, The Oxford History of the Laws of England*, Volume 1 (Oxford University Press: Oxford, 2004) 280, 509-510.

⁴⁰ See N. Doe and S. Pulleyn, op cit., 316.

⁴¹ Codex I, Title page and Preface, viii.

⁴² Codex I, xxviii: '*maxime, cum de jure communi quilibet hujusmodi ordinarius, in causarum cognitionibus committere valeat vices suas* - 'this is especially the case with the common law when any ordinary of this kind has power to depute his powers'; i.e. to commit them to what hands they please.

⁴³ Codex I, xx: 'And as to the second rule, viz., the trial of the incident matter, by that Court which hath the proper cognisance of the principal; this hath not only a plain maxim on its side'.

⁴⁴ Codex I, 5: 'And it is pursuant to a maxim of our laws, *Ecclesia est infra aetatem, et in custodia Domini regis, qui tenetur Jura et hereditates suas manu tenere et defendere* - 'The Church is under age and in the custody of the Lord king, who is bound to uphold and defend its rights and inheritances'.

⁴⁵ Codex I, 22: it is a 'declared maxim' that 'the Clergy are liable to all public charges imposed by Parliament, where they are not specially excepted'.

⁴⁶ Codex II, 689: it is a 'known maxim of the canon law' that 'A church is not obliged to pay tithes to [another] church'.

⁴⁷ Codex II, 1116: 'The Rule of canon Law' - degradation may be imposed by a bishop.

⁴⁸ In 4 volumes, this was in a 'dictionary form' arranged alphabetically.

⁴⁹ Burn, *Ecclesiastical Law* (2nd edition, 1767), I.480: 'rules of law'; I.129: 'No person may present himself: and it is according to the rule of the canon law'.

⁵⁰ Burn, I.255: cathedrals; I.381: 'the rule of the ancient canon law'; I.307: consecration.

⁵¹ Burn I.124: 'it is a maxim in law, that the church is not full against the king, till induction'; II.427: 'yet no maxim in the law is more established, than that a subsequent contrary act virtually repeals a preceding act, so far forth as it is contrary'.

⁵² Burn III.298: 'resignation can only be made to a superior'.

maxim of the canon law, that the church shall not pay tithes to the church’;⁵³ and a ‘general maxim’, once discharged, always discharged’.⁵⁴

Whilst in the nineteenth century Herbert Broom published his *Legal Maxims*, some of which deal with ecclesiastical matters,⁵⁵ the canonical literature abandons explicit reference to ‘maxims’ in favour of ‘principles’. For example, John Henry Blunt, in *The Book of Church Law* (1873), commonly uses a ‘recognised principle’, a ‘general principle’, a ‘principle’,⁵⁶ ‘a principle of the common law’,⁵⁷ or a ‘general principle of the canon law’, to which he may attribute great antiquity.⁵⁸ Blunt finds principles in, for example, the Thirty-Nine Articles of Religion, case-law,⁵⁹ and canon law, such as: ‘It is a principle of the canon law that no church can be erected without the permission of the bishop of the diocese in which it is situated’;⁶⁰ again: ‘this plain principle of law should be strictly recognised, and access to the church obtained’ through the incumbent who has a right to the church keys in the custody of the churchwardens.⁶¹ More extensive use was made of principles by Robert Phillimore in his two-volume *Ecclesiastical Law* (1873, second edition 1895). This is treated in Chapter 5 below.

In sum, whilst the use of axioms is constant across the history of church law, the terminology for their designation changes from period to period, as do understandings about their nature and their relationship to the details of the positive law of the church. The *regulae iuris* of medieval canon law, borrowed from classical Roman law, and both descriptive and prescriptive in form, were debated extensively by the canonists of the Latin Church (particularly whether they were themselves laws or derived from laws). At the Reformation and beyond, into the eighteenth century, ‘maxims’ were used as a vehicle to characterise axioms in the context of the law of the established Church of England, which embarked on the development and articulation of new axioms to meet the needs of ecclesial life. However, the concept of ‘maxims’ was displaced by the lawyers of the English church in the nineteenth century with that of ‘principles’ of church law, but many are indistinguishable from more detailed legal rules and few lawyers explicitly equated such principles with natural law or reason. Nevertheless, of historic ecumenical significance is how the use of legal maxims and principles survived the schism between Rome and the English Church. It is to the modern importance of this continuity - and the unifying potential of principles of church law implicit in it - that we now turn in terms of Catholic-Anglican dialogue, inter-Anglican relations, and the wider ecumenical movement in global Christianity.

⁵³ Burn II.256 and III.380.

⁵⁴ Burn, III.424: no tithe is payable on oak under 20 years of age; it is privileged (even if rotten).

⁵⁵ H. Broom, *Legal Maxims* (London: Sweet and Maxwell, 3rd edition, 1852): e.g. p. 323: ‘it is consent, not sleeping together, that makes a marriage’; adopted from D 50.17, 80.

⁵⁶ Blunt, 7: ‘The general principle...is, that the Crown possesses a visitatorial and corrective jurisdiction in the Church of England’; 311: ‘That which is so transferred to God cannot be alienated from Him without sacrilege’, is a ‘principle’.

⁵⁷ Blunt, 358: ecclesiastical incomes are dealt with by ecclesiastical persons.

⁵⁸ Blunt, 15: the canons of the Oxford Synod 1222 are ‘arranged by Lyndwood on the principle adopted by Gratian in...the *Decretum*’; 22: the Submission of the Clergy Act 1533 contains ‘the principle that convocation has no authority to pass laws except by licence from the Crown’; 38: ‘As regards lunatics the custom is to baptize them, if...in danger of death, on the principle laid down in the Elviran canon’; see also 41 (baptism), 179 (suicides and burial) and 331 (tithes).

⁵⁹ Blunt, 116: Article 23 states ‘a principle of the Church of England’ that it is not lawful to preach unless authorised; 94 and 294: principles induced from judicial decisions.

⁶⁰ Blunt, 298; Canon of Westminster 1138; J. Johnson, *Collection of All Ecclesiastical Laws* (1720).

⁶¹ Blunt, 267; he cites *Lee v Matthews* (1830) 3 Hag Ecc 169.

II. Three Modern Models for Juridical Ecumenism

The more immediate and recent stimuli, over the past twenty or so years, behind the initiative to establish the Christian Law Panel of Experts in 2013, and these operated in some measure as models for its work, were the work of Colloquium of Anglican and Roman Catholic Canon Lawyers, that of the Anglican Communion Legal Advisers Network, and scholarship on the phenomenon of ‘Christian law’. First: the Colloquium of Anglican and Roman Catholic Canon Lawyers. In 1998, the Ecclesiastical Law Society and the (Roman Catholic) Canon Law Society of Great Britain and Ireland hosted the biennial Lyndwood Lecture; it was held at St Paul’s Cathedral, London. The lecture explored how the principles of canon law may serve to function as a focus of legal unity the ecumenical dialogue between Anglicans and Roman Catholics. It examined underlying assumptions shared by both Catholics and Anglicans that there may be overarching ‘principles of canon law’ which have an existence independent of the individual canonical systems within both communions, but which are particularised in the norms of those systems. The lecture went on to describe their nature and foundational character, how they differ from (detailed) rules, their often theological content, their use and usefulness, location, origin and authority, and their potential as a unifying force in dialogue between Anglicans and Catholics.⁶²

The following year, 1999, some Anglican canonists, on a visit to Rome, participated in a colloquium organised by the Faculty of Canon Law of the Pontifical University of St Thomas (Angelicum). In the course of the event, the idea was sown that it would be a good idea to set up a similar colloquium in which Anglican and Roman Catholic Canon Lawyers could present for discussion their own positions on a variety of subjects. The first Colloquium took place in 1999 in Rome. It addressed ecclesiastical property. In ten years that followed, the Colloquium met to discuss clerical discipline, initiation into the Church, authority in the Church, ecumenical cooperation, orders and primacy, preparation for ministry, and marriage (including mixed-marriages).⁶³ For the Colloquium, comparison of the respective systems of canon law has a distinctive role in ecumenical dialogue by seeking: to provide a stable ecumenical methodology; to provide concrete data which embody theology; to provide a detailed guide to practical action for Christian life; to define the degree of achieved communion and the opportunities for and limits of future progress; to contribute to a description of the identity of membership of the church; to liberate and order the exercise of authority in decision-making which has consequences for individuals and institutions; and, in turn, to alert ecumenical partners in dialogue to the binding nature of Christian truth.⁶⁴

The first ten years of its work were summed up by the Colloquium as having been marked by ‘academic rigour, candid exchanges of views, and respectful listening’. It had been more than interesting to observe in the work of the participants what Anglicans and Roman Catholics have in common, what they do not share, and what is

⁶² N. Doe, ‘The principles of canon law: a focus of legal unity in Anglican-Roman Catholic relations’, *5 Ecclesiastical Law Journal* (1999) 221-240.

⁶³ Its proceedings were published: J. Fox OP, ed., *Render Unto Caesar: Church Property in Roman Catholic and Anglican Canon Law* (Rome, 2000); M. Hill, ed., *Clergy Discipline in Anglican and Roman Catholic Canon Law* (Cardiff, 2001); J. Conn, N. Doe, and J. Fox, eds., *Initiation, Membership and Authority in Anglican and Roman Catholic Canon Law* (Cardiff and Rome, 2005); N. Doe, ed., *The Formation and Ordination of Clergy in Anglican and Roman Catholic Canon Law* (Cardiff, 2009); N. Doe, ed., *Marriage in Anglican and Roman Catholic Canon Law* (Cardiff, 2009).

⁶⁴ Fourth Colloquium (2003): Statement on Authority 1: see J. Conn et al, op. cit., 317.

done simply in another way. Behind the conversations on matters canonical, there has always been a deep respect for the doctrine that often lies behind the legislation considered and for the sensitivities of each participant towards certain very delicate matters. Moreover: ‘By making clear what is not always perceived as clear, by setting out boundaries and limits, canon law not only serves as a useful source of norms regulating ecumenical relations but can be seen as an instrument of that very same dialogue. Canon law has helped us to see where we are radically united, and where we have yet to make progress in our journey’.⁶⁵ The years which followed saw the Colloquium discussing, the teaching of canon law, the regulation of public matters and private matters in church life, governance, parishes, and bishops in canon law.⁶⁶

Importantly, what characterised many of the meetings was the capacity of the group to articulate shared principles of canon law common to both communions. For example, its ‘agreed principles’ in relation to clerical formation include: the church has a responsibility to provide for clerical formation; clerical formation is necessary to assure the quality of ministry which is a means by which all the faithful receive the spiritual benefits of the church; the essential end of clerical formation is to equip ordination candidates for a life of holiness, sacramental ministry, preaching and pastoral care; the two communions share a concern to ensure that clerics are duly grounded in the doctrine and discipline of the church; clerical formation is continuing and lifelong; clerical formation should include training in canonical matters relevant to the exercise of ordained ministry; both communions acknowledge the possibility of conflict between canonical arrangements for clerical formation and civil law, such as in relation to matters of confidentiality, discrimination, psychological assessment and employment; ecumenical collaboration as to aspects of clerical formation is desirable and growing in practice; and the polities of the communions on marriage and celibacy affect the shape of clerical formation and instruction in seminaries.⁶⁷ The work of the Colloquium has also been appraised (and commended) by non-member scholars.⁶⁸

The second model for the principles of Christian law project was work of the global Anglican Communion Legal Advisers Network which resulted in the launch at the Lambeth Conference in 2008 of a document entitled *The Principles of Canon Law Common to the Churches of the Anglican Communion*.⁶⁹ The Communion has no formal body of law applicable to its forty-four member churches; each church is autonomous with its own legal system. The Communion is held together by ‘bonds of

⁶⁵ M. Hill, ed., ‘A Decade of Ecumenical Dialogue on Canon Law, A Report on the Proceedings of the Colloquium of Anglican and Roman Catholic Canon Lawyers 1999-2009’, 11 *Ecclesiastical Law Journal* (2009) 284-328.

⁶⁶ N. Doe, ed., *The Approaches to Public Matters and Private Matters in Anglican and Roman Catholic Canon Law* (Cardiff, 2016); N. Doe, ed., *The Teaching of Canon Law in Anglicanism and the Roman Catholic Church* (Cardiff, 2016); N. Doe, ed., *Counsel and Consent: Church Government in Anglican and Roman Catholic Canon Law* (Cardiff, 2016); and N. Doe, ed., *Bishops in Anglican and Roman Catholic Canon Law* (Cardiff, 2018).

⁶⁷ The Eighth Colloquium, Rome 17-20 April 2007: N. Doe, ed., *Formation of Clergy* (2009). 156; see also *ibid* 155 for ‘agreed principles’ on ordination, .e.g. elements of the rite common to both traditions; and 157: A Note to the International Anglican-Roman Catholic Commission on Unity and Mission.

⁶⁸ N. Sagovsky, ‘The contribution of canon law to Anglican-Roman catholic ecumenism’, 13 *Ecclesiastical Law Journal* (2011) 4-14, and B. Leahy, ‘The role of canon law in the ecumenical venture: a Roman Catholic perspective’, *ibid.* 15-25. Both papers were given at a Colloquium meeting in 2010.

⁶⁹ *The Principles of Canon Law Common to the Churches of the Anglican Communion* (London: Anglican Communion Office, 2008).

affection', shared loyalty to scripture, the creeds, baptism, the Eucharist, the historic episcopate, and its instruments of communion (Archbishop of Canterbury, Primates' Meeting, Lambeth Conference, and Anglican Consultative Council); but these institutions have no freestanding jurisdiction to make decisions binding on churches.⁷⁰

Following the Lambeth Conference 1998, global tensions in the Communion (mostly around issues of human sexuality) stimulated discussion of how the laws of churches may contribute to more visible international ecclesial unity in Anglicanism. In 2001, on the basis of a paper discussed at the event,⁷¹ the Primates' Meeting decided to explore whether there is an unwritten common law (or *ius commune*) shared by the churches of the Communion. An Anglican Communion Legal Advisers' Consultation (the first of its type) in 2002 tested and then accepted the hypothesis. The Primates' Meeting (2002) discussed a report on the Consultation and concluded: 'The Primates recognized that the unwritten law common to the Churches of the Communion and expressed as shared principles of canon law may be understood to constitute a fifth "instrument of unity"'. Later in 2002 the Anglican Consultative Council welcomed the establishment of a Network of Anglican Legal Advisers to produce 'a statement of principles of Canon Law common within the Communion' and in 2003, the Primates' Meeting urged completion of the work as did the Lambeth Commission in 2004. A Network drafting group met in 2005 and 2006, and after extensive consultation *The Principles of Canon Law Common to the Churches of the Anglican Communion* was launched at the Lambeth Conference in 2008. In 2009, the Anglican Consultative Council commended the Principles for study in all provinces, invited them to submit comments on the document, requested a report on these, and encouraged provinces to use the Network as a central resource in dealing with legal issues in those provinces.⁷²

The hundred principles are arranged under eight Parts (with over six hundred micro-principles). Part I, 'Order in the Church', deals with the necessity for law, and the sources, subjects, authority, application, and interpretation of law. Part II concerns 'The Anglican Communion', its nature, instruments of unity, provincial autonomy, and mutual respect. Principles of 'Ecclesiastical Government' are in Part III on for instance: representative government, legislative competence, visitations, and courts. Part IV addresses 'Ministry': the laity, lay ministers and deacons, priests, bishops, and archbishops. 'Doctrine and Liturgy', Part V covers the sources and development of doctrine and liturgy, public worship, and doctrinal and liturgical discipline. Principles on baptism, confirmation, Holy Communion, marriage, confession and burial are in Part VI, 'The Rites of the Church'. Part VII, 'Church Property' treats ownership and administration, places of worship, records, funds, and stipends and pensions. Part VIII on 'Ecumenical Relations' features ecumenical responsibilities, recognition of churches, ecumenical agreements, and admission to the Holy Communion. The principles themselves are induced from the similarities between the laws and other regulatory instruments of the churches (including normative doctrinal texts) and cast as e.g. precepts, prohibitions, permissions, exhortations and descriptive maxims.⁷³

⁷⁰ N. Doe, *Canon Law in the Anglican Communion* (Oxford: Oxford University Press, 1998) 338.

⁷¹ N. Doe, 'Canon law and communion', 6 *Ecclesiastical Law Journal* (2002) 241-263.

⁷² ACC-14, Resolution 14.20 (5 May 2009).

⁷³ For the process and methodology used by the Network, see N. Doe, 'The common law of the Anglican Communion', 7 *Ecclesiastical Law Journal* (2003) 4-16.

This document is not a system of international canon law but a statement of principles of canon law which articulate the common ground between the legal systems of each of the churches of the global Communion; the document defines a ‘principle of canon law’ as ‘a foundational proposition or maxim of general applicability which has a strong dimension of weight, is induced from the similarities of churches, derives from the canonical tradition or other practices of the church, expresses a basic theological truth or ethical value, and is about, is implicit in, or underlies canon law’.⁷⁴ In point of fact, many of the principles echo or equate with the traditional canonical maxims: ‘Laws cannot oblige a person to do the impossible’;⁷⁵ ‘Persons cannot give what they do not have’;⁷⁶ a declaration to comply with ecclesiastical jurisdiction binds the person who makes that declaration;⁷⁷ ‘bodies or persons who exercise ecclesiastical functions may delegate to others only such functions as they are not required to perform themselves’;⁷⁸ the judges of church courts are ‘to exercise their office impartially, without fear or favour’;⁷⁹ consecrated property ‘may not be used for purposes inconsistent with the uses of God for which it was set aside’;⁸⁰ and church trustees are not liable for any financial loss resulting from an investment ‘unless such loss is due to their own wilful default or culpable negligence’.⁸¹ Some principles admit to their own exceptions – and they apply to the extent allowed by church law.⁸²

Thirdly, three publications added to the impetus for a wider ecumenical consideration of the potential unifying value of principles of church law.⁸³ The first is a book written by Marc Reuver: this valuable study describes in parallel the laws of churches from numerous Christian traditions but focusses on the potential differences between these in terms of an ecumenical problem, by institutionalising the separation of churches.⁸⁴ The second is a book, by a Welsh (Anglican) canonist, which offers a detailed comparison of the laws and other regulatory instruments of over a hundred churches across ten historic Christian traditions worldwide: Catholic, orthodox, Anglican, Lutheran, Methodist, Reformed, Presbyterian, United, Congregational and Baptist. From this comparison, the book proposes that all the denominations studied share common principles of law in spite of their doctrinal differences, and that these principles reveal a concept of ‘Christian law’ and also contribute to a theological understanding of global Christian identity. It deals with the sources and purposes of church law, the faithful and ministers, church governance, discipline and dispute resolution, doctrine and worship, the rites of passage, ecumenical relations, property

⁷⁴ *Principles* (2008); for background, see *ibid.*, p. 97, N. Doe, ‘The contribution of common principles of canon law to ecclesial communion in Anglicanism’.

⁷⁵ Principle 7.3; VI.6: ‘No-one can be obliged to the impossible’.

⁷⁶ Principle 7.4; VI.51: ‘Once given to God it should not be transferred to the use of man’.

⁷⁷ Principle 5.6; VI.27: ‘To the one who knows and approves, there is neither injury nor malice’.

⁷⁸ Principle 17.4; VI.68: ‘Whatever someone can do by himself, he can do it by another (unless the power to act cannot be delegated)’.

⁷⁹ Principle 24.7; VI.12: ‘Justice should be rendered without respect to persons’.

⁸⁰ Principle 81.5; VI.51: ‘Once given to God it should not be transferred to the use of man’.

⁸¹ Principle 89.4; VI.62: ‘No liability arises from advice given provided it was not fraudulent’.

⁸² E.g. Principle 41.6: ‘Clergy...are subject to...the bishop to the extent provided under the law’.

⁸³ Whilst recent years have seen a dramatic increase in studies on law and religion (mainly on State law on religion), and on laws of individual churches, little work exists on comparative church law. However, see the prophetic article H. Engelhardt, ‘The lawyer’s contribution to the progress of Christian unity’, *The Ecumenical Review* (1969) 7-22: this proposed the establishment of an Ecumenical Institute of Ecclesiastical Law maintained by the World Council of Churches.

⁸⁴ M. Reuver, *Faith and Law: Juridical Perspectives for the Ecumenical Movement* (Geneva: World Council of Churches, 2000). See below for WCC consideration of law.

and finance, and church, State and society. Its key message is that whilst dogmas may divide, laws link Christians across the traditions by stimulating through their norms of conduct common action: and this should feed into the global ecumenical enterprise.⁸⁵

The third is a book by Leo Koffeman, a Professor of Church Polity and Ecumenism at the Protestant Theological University Amsterdam, who served on the Faith and Order Commission of the World Council of Churches. Writing mainly but not exclusively from the Reformed tradition, Koffeman observes that ecclesiology (that branch of theology which focusses on the nature of the Church universal) is at the centre of current ecumenical dialogue. However, this focus on ecclesiology does not include theological reflection on church polity (order or law). Therefore, the book seeks ‘to enhance a truly ecumenical and inter-cultural approach of the theological discipline of church polity, without neglecting its juridical character’. Particularly relevant to juridical ecumenism, are the following themes developed by Koffeman. First, as to ‘ecumenical church polity’, he proposes that, alongside unilateral norms made by a church on ecumenism and joint norm-making in inter-church agreements, ecumenical partners could develop ‘a joint set of regulations in which the churches transfer specific competencies to ecumenical organizations, arbitration committees or other bodies’. Secondly, and critically: ‘Each church polity system has to be challenged theologically, and each includes challenges to the other systems’ - ‘there is no “ideal” system’ – ‘the only option is a truly ecumenical approach’ which recognises that ‘each church polity system is necessarily provisional’. Thirdly, in light of the marks of the Church universal (one, holy, catholic and apostolic), Koffeman offers four criteria to measure the moral standards of church polity: inclusivity (embracing all people); authenticity (living up to the Gospel); conciliarity (giving voice to all the faithful); and integrity (meeting the highest standards of ethical behaviour - ‘not everything goes within the church. The Gospel implies limitations’. This book is not only a landmark in understanding the juridical dimension of ecclesial life, but also in uncovering the value of church law-order-polity for ecumenism. Koffeman, therefore, facilitates exploration of the ways in which laws enable or restrict greater visible communion between separated churches.⁸⁶ Many of these important ideas mirror, independently, the thinking of the Roman Catholic canonist Robert Ombres OP, for whom canon law is applied ecclesiology, and the missing link in global ecumenism.⁸⁷

III. The Panel of Experts and its Principles of Christian Law (2016)

⁸⁵ N. Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013): the Appendix contains a statement of principles of Christian law. The book was stimulated partly by the invitation of John Witte for a chapter on ‘Modern Church Law’ in J. Witte and F.S. Alexander, eds., *Christianity and Law* (Cambridge: Cambridge University Press, 2008) 271-291. For critical appraisal, see Baroness (Brenda) Hale: ‘Secular Judges and Christian Law’, *17 Ecclesiastical Law Journal* (2015) 170-181 at 178; and B. Hale, ‘Religious freedom and the law’, in F. Cranmer, M. Hill, C. Kenny and R. Sandberg, eds., *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (Cambridge University Press, 2016) 218-232 at 229; and L. Koffeman, ‘The Ecumenical potential of church polity’, *17 Ecclesiastical Law Journal* (2015) 182-193 at 193.

⁸⁶ L.J. Koffeman, *In Order to Serve: An Ecumenical Introduction to Church Polity* (Berlin: LIT, 2014): ‘Church polity as a theological discipline is: the systematic analysis, evaluation and development of the sum total of established rules as a legal system that governs structure and legal relations within churches...their mutual relations and...to respective states, from the perspective of ecclesiology’.

⁸⁷ R. Ombres, ‘Canon law and theology’, *14 Ecclesiastical Law Journal* (2012) 164-194.

At its first meeting in Rome 2013, the Christian Law Panel of Experts was presented with the Anglican principles of canon law project as a possible model.⁸⁸ First, the Panel found ‘broad consensus on the following general conclusions’,⁸⁹ namely: (1) there are principles of church law and order common to the Catholic, Orthodox, Anglican, Lutheran, Methodist, Reformed, Presbyterian and Baptist traditions and their existence can be factually established by empirical observation and comparison; (2) the churches contribute through their own regulatory instruments to this store of principles; (3) the principles have a strong theological content and weight and are fundamental to the self-understanding of Christianity; (4) they have a living force and contain within themselves the possibility of further development and articulation; and (5) they demonstrate a degree of unity between churches, stimulate common Christian actions, and should be fed into the global ecumenical enterprise to enhance fuller visible unity. Secondly, the Panel agreed that: church law or order exist to serve a church in its mission and witness to the salvific work of Christ; laws are necessary to constitute the institutional organisation of a church and facilitate and order its public activities but cannot encompass all facets and experiences of the Christian faith and life; laws are the servant of the church and must promote the mission of the church universal; theology shapes law, and law implements theological propositions in norms of conduct; and church laws should conform to, and are subject ultimately to, the law of God, as revealed in Holy Scripture and by the Holy Spirit. Thirdly, the Panel agreed that a consideration of church law/order/polity may provide a new medium, within the context of receptive ecumenism, for the ecumenical enterprise: namely, that law (as a discrete element of the ecclesiological self-understanding of churches) should be conceived as an instrument for global ecumenism. Identifying juridical similarities and differences is likely to be important for ecumenical understanding.⁹⁰

To test further these hypotheses, the Panel of Experts met a second time in Rome, in October 2014, to discuss how its work might feed into that of the World Council of Churches by means of a response to the WCC Faith and Order Commission Paper No 214, *The Church: Towards a Common Vision* (2013). The Panel noted that over the years there has been interest in the role of church law and church order in the ecumenical enterprise, but that this has not been developed. For example, in 1974 the Faith and Order Commission called for discussion of ‘church law’ on the basis that: ‘The churches differ in their order and their constitution’; ‘differences in the...legal systems of the churches have their roots in different confessional traditions’; and these differences concern ‘not only the actual order which the churches have, but also the general orientation by which their legislation is inspired’.⁹¹ In the same year, a call was made ‘to consider the role of constitutional matters’, but in 1978 the Director of Faith and Order reported that ‘given limited resources available...the study will probably never get very far’; this has led to the view that ‘questions and conflicts in these areas

⁸⁸ At the first symposium of the Panel (see footnote 1 above for its membership), the present author presented the Anglican project in the first session. Reference was also made to the Anglican project in L.J. Koffeman, *In Order to Serve: An Ecumenical Introduction to Church Polity* (Berlin: LIT 2014) 70.

⁸⁹ That is: ‘as ventured by Professor Norman Doe in his book, *Christian Law: Contemporary Principles* (Cambridge University Press 2013)’: Christian Law Panel of Experts: Response to the World Council of Church Faith and Order Commission Paper, *The Church: Towards a Common Vision* (2013) (December 2015) p. 3.

⁹⁰ Panel: Response to *Common Vision* (2013) (Dec. 2015) pp. 3-4. These points broadly mirror those of the Anglican Communion Legal Advisers Network: see above n. 73.

⁹¹ FAOC: ‘The Ecumenical Movement and Church Law’, Document IV.8 (1974).

have accompanied the ecumenical movement ever since, which confirms the foresight of those earlier initiatives and the need to take them up once again'.⁹²

The Panel, therefore, considered at its second meeting that a juridical response to *The Church: Towards a Common Vision* (2013) would be valuable. This was the case for two reasons. First, *Common Vision* does not consider church law or its role in ecumenism. Yet the thrust of *Common Vision* is convergence in belief (the primary stimulus for law) and in action (the primary focus of law) and its language is often normative (the primary character of law). Many themes in *Common Vision* surface in church laws. Exploration of these would enable the WCC to see how church laws: articulate ideas in *Common Vision*; translate these into norms of conduct; and, in turn, generate unity in common action (across the church families). Secondly, church laws are applied ecclesiology. They also shape the ecclesiology of churches. Thirdly, such exploration would enable the WCC to understand how systems of church law help or hinder ecumenism. The Panel began work on drafting a response to *Common Vision*.⁹³

The Panel met a third time in Rome in October 2015. It achieved three things. First, it finalised its response to *Common Vision*.⁹⁴ This indicated how comparing church laws: facilitates the articulation of principles of law common to the churches; enables reconciliation of juridical difference in the form of underlying principles of law; provides a stable ecumenical methodology through its focus on concrete textual data; offers a practical guide for Christian life; and defines both achieved communion and opportunities for and limits on future progress. Moreover: 'Re-imagining ecumenism through law, as applied ecclesiology in...norms of conduct, would advance *Common Vision*'s idea that "common action" is 'intrinsic to the life and being of the Church'.⁹⁵

Secondly, the Panel worked on a set of candidate principles, circulated to its members in advance, on two topics: Church Discipline; and Church Property. In terms of method, the preparatory work asked members to agree, disagree, or agree to differ on the candidate principles. The meeting also gave the opportunity to revise principles over which there was disagreement in order to reconcile differences in the form of a common principle of law. The exercise was whether there was legal evidence that the candidate principles appear explicitly or implicitly in the regulatory instruments of the traditions in question. The exercise was *not* whether the candidate principles *ought* to be principles of Christian law. Discussion was robust. Of the fifty or so candidate principles circulated, forty-seven were agreed.⁹⁶ The agreed principles, with the Panel response to *Common Vision*, were submitted to WCC in December 2015 with a view, 'in the longer term, towards adoption by the WCC so that the Christian Law endeavour will be of lasting value to the ecumenical movement in its quest for greater visible Christian unity'; more immediately, the Panel also invited the Faith and Order

⁹² Also, in Louvain 1971 the Faith and Order Commission discussed a study on 'Institution, Law and State', but this 'was not pursued further, mainly because of lack of funds': G. Gassmann, ed., *Documentary History of Faith and Order 1963-1993* (Geneva, WCC 1993) p. 206-207.

⁹³ The suggestion to respond to *The Church: Towards a Common Vision* was that of L.J. Koffeman.

⁹⁴ The paper (with changes) was re-produced as N. Doe, 'The Ecumenical Value of Comparative Church Law: Towards the Category of Christian Law', 17 *Ecclesiastical Law Journal* (2015) 135-169.

⁹⁵ Panel: Response (2015) p. 4 (see *Common Vision* par. 61 for 'common action'). These points mirror those made by the Colloquium of Anglican and Roman Catholic Canon Lawyers: see above n. 64.

⁹⁶ These are set out in section III of the Response (pages 26-29): For the purposes of the response, the expression 'law' was understood by the Panel to encompass a variety of regulatory instruments and norms including constitutions, canons, covenants, books of church order, and other polity documents.

Commission itself ‘to engage in a dialogue in which the Christian Law project can be used as an expression of institutional unity and a means of practical ecumenism’.⁹⁷ Thirdly, the Panel agreed to continue to discern and articulate principles of law on governance, ministry, doctrine, worship, ritual, church-State relations and ecumenism.

During the course of 2016, further candidate principles were circulated to the Panel in two batches. The first contained principles on four topics: Churches and their Laws; the Faithful; Ministry; and Church Governance. The second contained principles on: Doctrine and Worship; Rites of Churches; Ecumenism; and Church-State Relations. At its fourth symposium in Rome in September 2016, the Panel used the same method as that employed at its 2015 meeting. Once again, discussion was rigorous, rich, and robust.⁹⁸ First, occasionally, candidates were agreed without revision; for example: ‘A church is autonomous in its system of governance or polity’; ‘Customs may have juridical force to the extent permitted by the law of a church’; and: ‘A church may institute a system of ecclesiastical offences’. Secondly, some were agreed with minor or substantial revision, such as: ‘Laws are necessary to constitute the institutional organisation of a church and facilitate and order its public activities but cannot encompass all facets and experiences of the Christian faith and life’ became ‘Laws contribute to constituting the institutional organisation of a church and facilitate and order its activities’; and: ‘The right to exercise discipline over the faithful is based on divine and spiritual authority’ became ‘The right to exercise discipline has a variety of foundations including divine and spiritual authority’. Thirdly, many were rejected; for instance: ‘The presence of law in a church does not mark out its doctrinal posture’; ‘Laws are the servant of the church and must promote the mission of the church universal’; ‘Laws cannot oblige a person to do the impossible’; ‘If there is doubt about the meaning of a law, that law does not bind’; ‘All the faithful share in the threefold ministry of Christ: king, prophet and priest’; ‘A church may receive into its membership any person who qualifies under its law’; ‘Ordination cannot be repeated’; and: ‘An international ecclesial institution has such functions and authority over its autonomous constituent parts as are assumed by the institutional church represented in it or conferred upon it by those churches associated with it’. Fourthly, some were simply replaced, such as: ‘No person in a church is above its law’ was replaced with ‘All members of a church are subject to its laws as are its component institutions, to the extent that the law provides’. Fifthly, others, not appearing among the candidates, were added; for instance: ‘All ecclesial units at each level are interdependent’.⁹⁹

At the end of the 2016 symposium, the Panel agreed ‘A Statement of Principles of Christian Law Common to the Component Churches’.¹⁰⁰ It appears in the Appendix to this volume and has ten Sections: churches and their systems of law; the faithful; ordained ministry; church governance; church discipline; doctrine and worship; the rites of the church; ecumenism; church property; and church and state relations. Each Section opens with a short narrative which sets out ‘a number of facts based on church

⁹⁷ Panel: Response (2015) p. 5.

⁹⁸ The candidate principles considered by the Panel of Experts were those as set out in N. Doe, *Christian Law: Contemporary Principles* (Cambridge University Press, 2013) Appendix, 387-398.

⁹⁹ Each Panel member, needless to say, gave legal reasons for these - reception, revision, replacement, rejection, or addition. However, a description of these reasons is beyond the scope of this study. Whilst most principles are prescriptive (precepts, prohibitions, or permissions), many are descriptive; of the latter, some were placed at the opening of a Section as statements of legal fact.

¹⁰⁰ Of the 250 or so candidate principles considered, 230 were accepted (in a revised or added form).

regulatory systems which the Panel considers relevant to the area of ecclesial life treated, but which may not in the Panel's opinion represent principles of law'.¹⁰¹ The grouping of principles into these Sections is conditioned by the systematisation of laws generally employed by the historic churches from whose laws they are induced. The principles are derived from various regulatory sources, including codes of canon law, statutes, constitutions, books of church order, and other policy documents. The juridical values of clarity, conciseness and consistency govern their form and they are cast in a variety of ways, as: permissions, precepts, prohibitions, exhortations, and descriptions – their forms, once more, mirror the laws from which they are induced.

The 2016 Rome symposium of the Panel also decided to seek a meeting in Geneva in November 2017 with the Director of the WCC Faith and Order Commission, Dr Odair Mateus. This was agreed on the basis of the conviction of the Panel that ecumenical rapprochement may be served if experts in church polity, order or law from most confessional traditions enter into an ecumenical dialogue. The meeting would also seek to evaluate what the Panel has done so far - as to methodology, conclusions, the extent its work fosters the ecumenical movement, and the degree to which the project may be extended to other church families whose churches are members of the WCC and to understand how the project might be received by the WCC Faith and Order Commission and fit into its wider programme over the years to come. In preparation, during 2017, Panel members were asked to address: (1) the value of the definition of a 'principle of law common to the churches';¹⁰² (2) whether all the principles may be 'factually established by empirical observation and comparison'; and (3) in what ways the Panel might continue its work and identify further objectives and next steps, and how important it is to 'establish a clear link with the Faith and Order Commission'.¹⁰³

At Geneva in November 2017, suitably in the year of the five-hundredth anniversary of the Reformation,¹⁰⁴ the Panel presented to Dr. Mateus (Director WCC Faith and Order Commission) a published copy of *Principles of Christian Law*,¹⁰⁵ the first ecumenical exercise of its type. This was received with thanks by Dr. Mateus, who outlined the history of ecumenism leading to *Common Vision* (2013), the aborted WCC discussion of church law in the 1970s, and how debate on Christian law would represent a new development for WCC practice in so far as its traditional focus has been on theological dialogue, not law. Importantly, Dr Mateus also recognized the potential unifying force of law as 'an element of the true church'. Dr. Ani Ghazaryan Drissi of the Faith and Order Commission Secretariat added that the Panel response (2015) to *Common Vision* had already been seen, within the Commission process examining this and other responses, as 'unique', 'profound', a 'valuable approach', and an 'alternative path'. The Panel's work is the subject of ongoing consideration by the members of the Commission. Equally important, Dr. Mateus suggested that there was also scope for debate about law in other areas currently of concern to the Commission, namely: justice

¹⁰¹ See also above footnote 44.

¹⁰² Namely: 'A "principle of law" common to the churches of the Christian traditions studied here is a foundational proposition or maxim of general applicability which has substance, is induced from the similarities of the regulatory systems of churches, derives from their juridical tradition or the practices of the church universal, expresses a basic theological truth or ethical value, and is implicit in, or underlies, the juridical systems of the churches'; see also N. Doe, *Christian Law* (2013) Appendix, 388.

¹⁰³ Leo Koffeman (a former Faith and Order Commission member) would arrange the meeting; he also drafted the Leading Questions. Leo Koffeman, Email to Odair Mateus and Panel members 25-4-2017.

¹⁰⁴ It was at the John Knox Centre, 23-24 November 2017.

¹⁰⁵ M. Hill and N. Doe, 'Principles of Christian Law', 19 *Ecclesiastical Law Journal* (2017) 138-155.

and peace; moral discernment; and new churches. Dr. Mateus then proposed setting up an ‘informal but substantial consultative partnership’ between the Panel and the WCC Commission in order for them to continue working together. The Panel warmly welcomed this - and the partnership was later confirmed by an exchange of letters.¹⁰⁶

The Panel next met in Rome in November 2018 with Commission members. The Panel members reported on local events agreed at Geneva 2017 to be held on the *Statement of Principles of Christian Law* (Rome 2016). Ann Tronet spoke about an event held at Uppsala, Sweden on 28 May 2018 at which the project was welcomed as neutral and novel, but questions were raised about the definition of terms in the *Statement*. Norman Doe spoke of an event held with Churches Together in Wales at Cardiff on 10 September 2018 at which participants were initially hostile but then moved to welcome the project as useful (though questions were asked about the descriptive/prescriptive nature of the principles). Leo Koffeman spoke about an event held in Amsterdam on 26 September 2018 which he and Leon van den Broeke organised – a Muslim and a Baptist responded to the project which was welcomed as ‘fruitful’ and ‘juridically correct’ but questions were raised as to what use might be made of the *Statement*. Nikos Maghioros explained that he had started work on translating the *Statement* into Greek.

Leo Koffeman circulated a paper in advance and the panel discussed this. He explained: how the project would have focussed on church laws as expressing ‘differences’ between churches, not as about their potential for unity; that the proposed project was very much ‘of its time’, when organic union was a key WCC focus, and legal challenges of were faced by uniting churches; that the idea was dropped because of, *inter alia*, new agendas intervening, personnel issues, and finance. The panel agreed that a focus on difference embeds difference, and that its project focusses on the unifying potential of comparing church law with a view to articulating shared principles.

The informal partnership proposed and agreed at Geneva 2017 with the Director of the Faith and Order Commission has been fruitful: Angela Berlis (Commission member) joined the Panel and contributes from Old Catholic perspectives. Susan Durber, Moderator of the Commission attended the Rome meeting in 2018 and spoke of, and the Panel discussed, further possible activity based on the partnership, with regard to: (a) the Commission Study Group 1 the pilgrimage of justice and peace, focussing on churches acting together in the world; (b) Study Group 2, analysing the responses to *The Church: Towards a Common Vision* (2013) - including the Panel’s submission and its *Statement* (2016) (see further below); and (c) Group 3, on moral discernment. Susan Durber went to the heart of the matter: (1) the perception is, in some places, that church law inhibits ecumenical advancement – it is often seen as an instrument of division - and there is also in some places an anxiety among churches that the ecumenical movement itself will call for changes to the canon law of churches; but (2) the *Statement* changes this perception and it provides a safe space for churches to reflect on issues; (3) it would be good for the partnership to work for the mutual flourishing of the Panel and Commission; (4) the Panel should more widely test the *Statement*, e.g. among Roman Catholics, and Orthodox, for a wider recognition of the facilitative role which comparative church law offers to ecumenism – that is, in order to ‘change the discourse from church law as an inhibitor to ecumenism’ to seeing its potential for enabling greater visible unity.

¹⁰⁶ E.g. Email: Koffeman-Druher: 11-4-2018.

Mark Hill summed up that the *Statement* is ‘not a threat to ecumenism – neither is it a panacea – but the principles are a tool for identifying common ground ecumenically’. There was also consensus around the idea that when churches are in the process of uniting with other churches (organic union), the *Statement* could contribute usefully.

There were three sessions to ‘drill down’ into the principles on ecclesial discipline. The Panel was heartened by the fact that these principles stood up to rigorous testing. However, matters debated included: the meaning of ‘discipline’ – and how this was related to ‘discipleship’; that discipline is perceived today as needed in light of issues about sexual abuse; that ‘visitation’ could be placed alternatively under ‘oversight’ in Principles III.4; that the phrase ‘or civil law’ in V.4.2 was problematic – a church could not be required by civil law to carry out an internal formal process for discipline though a church could be required to participate in a formal process in state courts; and V.4.4 – ‘must secure’ could include ‘should ensure’. It was accepted that whilst the principles are in one sense interpretations of actual church laws, they themselves are also the object of interpretation in the light of the actual laws of churches. Susan Durber welcomed the consensus style of the Panel in its work and its confidence in the novel use of the language of prescription when articulating the principles of Christian law.

It was agreed that Phase One of the work of the Panel was complete (from 2013-2018), expressed by Leo Koffeman as itself in the nature of realising ‘a dream’, namely: (1) agreeing on the category ‘principles of Christian law’, the methodology to articulate them, and their potential for ecumenism; (2) responding to the WCC *The Church: Towards a Common Vision*; (3) agreeing the *Statement of Principles of Christian Law* (Rome 2016); (4) establishing an informal partnership with WCC Faith and Order Commission in 2017 (at Geneva) and, in 2018, Susan Durber, Commission Moderator participating in a Panel meeting; and (5) the introduction of national/local events to stimulate debate on the *Statement*. It was agreed that there should be no full Panel meeting in 2019. Instead, Phase Two should be for *advocacy, testing and reception* of the *Statement* at national and international events. Advocacy and discussion of the *Statement* has taken place since, for example, at: Melbourne and Sydney (Mark Hill, February 2019); Istanbul at a private meeting with the Ecumenical Patriarch (Norman Doe, March 2019); Rome at a meeting with Pope Francis (Norman Doe and Mark Hill presenting the *Statement*, April 2019); and in London (at a meeting of Churches Together in England (Paul Goodliff, Mark Hill, and Norman Doe, July 2019). At Oslo in June 2019, Doe presented the *Statement* to the Most Revd Helga Haugland Byfuglien, Presiding Bishop of the (Lutheran) Church of Norway and addressed a meeting of ecumenists on it. Plans are also underway for a workshop to be held on the project at the World Council of Churches Assembly (which meets every eight years) meeting at Karlsruhe, Germany, in September 2021.

Conclusion

There are well-tested historic and modern models for the wider articulation today of principles of Christian law. The medieval western canonists used juridical maxims, in the form of *regulae iuris*. This practice survived at and beyond the Reformation, and continued with the move to principles of law (exemplified in English ecclesiastical law from the Enlightenment). The practice has also thrived in the modern models provided by the work of the Colloquium of Anglican and Roman Catholic Canon Lawyers, the

Anglican experience with respect to its principles of canon law, and recent scholarship. When compared, there are profound similarities between the basic elements of the normative regimes of the churches across the ecclesial traditions from which jurists and theologians met for the work of the Christian Law Panel of Experts. This is not surprising: juridical unity is often based on the practice of churches to use a common source in shaping their laws (chiefly, Holy Scripture), and their adoption or adaptation of norms of the mother church, in the case of those churches within a single tradition, or at least elements of them in the case of churches which have broken away from that tradition. From these similarities may be induced common principles of law. The existence and articulation of these in the Panel's *Principles of Christian Law* (Rome 2016) is rightly of particular interest to the World Council of Churches, its Faith and Order Commission, and its *Common Vision* project. This volume is itself both inspired by and the fruit of the partnership established by the Panel and the World Council of Churches Faith and Order Commission in Geneva 2017 – and an apt way to mark the five-hundredth anniversary of the Reformation.

Regulatory systems of churches shape and are shaped by ecclesiology. These systems also tell us much about convergence in action, including and beyond the matters addressed in *Common Vision*, based on common norms of conduct, as well as the commitment of churches to ecumenism. Whilst certain dogmas may divide churches, this does not negate those profound similarities between their norms of conduct, which produce juridical convergence. This reveals that norms of the faithful, whatever their various denominational affiliations, link Christians through their stimulation of common forms of action. As laws converge, so actions converge. Whilst there are key differences, similarities between the norms of conduct of churches indicate that their faithful engage in the visible world in much the same actions as other Christians. This must count for something in the ecumenical enterprise. In turn, comparing church law-order-polity systems, themselves forms of applied ecclesiology: enables the articulation of principles of law common to the churches; enables the reconciliation of juridical difference in the form of underlying principles of law; provides a stable ecumenical methodology through its focus on concrete textual data; offers a practical guide for Christian life; and defines that degree of achieved communion as well as opportunities for and limits on future progress. Time will tell.