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Ecclesiastical Law Journal / Volume 8 / Issue 37 / July 2005, pp 147 - 161
DOI: 10.1017/S0956618X00006219, Published online: 31 July 2008

Link to this article: http://journals.cambridge.org/abstract_S0956618X00006219

How to cite this article:

Norman Doe (2005). The Anglican Covenant Proposed by the Lambeth Commission. Ecclesiastical Law Journal, 8, pp 147-161 doi:10.1017/S0956618X00006219

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THE ANGLICAN COVENANT PROPOSED BY THE LAMBETH COMMISSION

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The Lambeth Commission (2004) proposed a number of short-term and long-term solutions to issues raised by recent and highly controversial developments in the Episcopal Church (USA) and the diocese of New Westminster (Canada). From these events have emerged important questions about the nature of communion between, and the autonomy of, each of the forty-four member churches of the Anglican Communion, and the way in which decisions of common concern are made. In order to consolidate this communion, as a long-term project, the Commission proposes the adoption of an Anglican Covenant by all forty-four churches of the Communion. This article describes the terms of the proposed Covenant and identifies their provenance, in order to establish that the proposal is for the most part a restatement of classical Anglicanism. Only in serious cases of disagreement which substantially risk the unity of the Communion is the proposal innovative. The article also describes briefly reactions to and possible implementation of the proposed Covenant.

INTRODUCTION

At their meeting in 2001 the Primates of the Anglican Communion considered a paper on canon law and communion which proposed (a) acknowledgement of a *ius commune* of the Anglican Communion; and (b) adoption of a covenant, with the Primates as signatories, a 'concordat for incorporation by individual churches within their own canonical systems' seeking 'to increase the profile of communion, to define their inter-church relations, and for the resolution of inter-Anglican conflict'.² Work progresses on the first proposal, the Consultation of Legal Advisers (2002) concluding that 'there are principles of canon law common to the churches' of the Communion,³ a conclusion endorsed by the Primates' Meeting (2002),⁴ which in 2003 encouraged the Network of Anglican Legal Advisers

¹ I am deeply indebted to Eithne D'Auria for her invaluable assistance, to other colleagues at the Centre, particularly Anthony Jeremy, Chancellor Mark Hill, and Dr Augur Pearce, and to Cardiff Law School for its support, during my time on the Lambeth Commission.

² The paper was subsequently published: N Doe, 'Canon law and communion', (2002) 6 Ecc LJ 241-263, esp 262; (2003) 3 *International Journal for the Study of the Christian Church* 85-117, esp 115.

³ See the report by John Rees at (2003) 6 Ecc LJ 399.

⁴ See N Doe, 'The Common Law of the Anglican Communion', (2003) 7 Ecc LJ 4.

to complete its work on a statement of the principles.⁵ The adoption of an Anglican Covenant was recommended in October 2004 by the Lambeth Commission on Communion, set up by the Archbishop of Canterbury at the request of the Primates in October 2003 to address 'the legal and theological implications flowing from the decisions of the Episcopal Church (USA) to appoint a priest in a committed same sex relationship as one of its bishops, and of the Diocese of New Westminster [Canada] to authorise services for use in connection with same sex unions'.⁶ The proposed Anglican Covenant is contained in the Commission's *Windsor Report* (2004).⁷ The Commission recommends that each church enact a 'brief law',⁸ to authorise 'its primate (or equivalent) to sign the Covenant on behalf of that church and commit the church to adhere to the terms of the Covenant'.⁹ Discussing the report at their meeting in February 2005, as to 'the proposal for an Anglican Covenant', the Primates stated: 'we therefore commend this proposal as a project that should be given further consideration in the Provinces of the Communion between now and the Lambeth Conference 2008'.¹⁰

THE CASE FOR THE COVENANT

Currently, the Anglican Communion is understood as a fellowship of autonomous churches, each with its own legal system, in communion with the See of Canterbury; there is no body, at the global level, competent to make decisions binding on churches: they are held together by non-juridical bonds of affection.¹¹ The Commission approaches the matter which it was charged to address in terms of 'illness', not only within the Communion (including disregard for statements of the Instruments of Unity,¹² declarations of impaired communion, and external intervention in the affairs of provinces), but also in its effect on relations between Anglicans

⁵ Statement, Lambeth, 15-16 October 2003. The Network was set up, as the Primates recommended (2002), by the Anglican Consultative Council (Hong Kong, September 2002) to 'produce a statement of the principles'.

⁶ Lambeth Commission, Mandate, I.

⁷ The Lambeth Commission on Communion, *The Windsor Report* (hereafter WR) (Anglican Communion Office, London, 2004) Appendix II, Proposal for the Anglican Covenant.

⁸ WR, para 118, n 61: suggested form of law: 'The Governing Body of the Church in Wales authorises the Archbishop of Wales to enter on behalf of this church the Anglican Covenant and commits the Church in Wales to comply and act in a manner compatible with the Covenant so entered'.

⁹ WR, para 118; Proposed Covenant (hereafter PAC), Preamble: 'We, the churches of the Anglican Communion, in order to foster greater unity and to consolidate our understandings of communion, solemnly establish this Covenant, entered on our behalf by designated signatories and to which we shall adhere as authorised by laws enacted by each of our churches for these purposes, so that our communion may be made more visible and committed, and agree as follows...'

¹⁰ Primates' Meeting, *Communiqué*, 24 February 2005, para 8. See also below as to implementation.

¹¹ See generally N Doe, *Canon Law in the Anglican Communion* (Oxford, 1998).

¹² That is: the Archbishop of Canterbury, Primates' Meeting, Lambeth Conference and ACC.

and their ecumenical partners.¹³ It understands the causes to relate to (among others) the nature of authority in Anglicanism: 'the principles about communion, autonomy, discernment in communion and inter-Anglican relations, enunciated at global level by the Instruments of Unity, have persuasive moral authority for individual churches; they do not have enforceable juridical authority unless incorporated in their legal systems (and generally they are not incorporated)'.¹⁴ Moreover: '[n]o church has a systematic body of "communion law" dealing with its relationship of communion with other member churches ... inter-Anglican relations are not a distinctive feature of provincial laws'.¹⁵ Consequently, 'how to make the principles of inter-Anglican relations more effective at the local ecclesial level' is 'a persistent problem in Anglicanism contributing directly to the present crisis'.¹⁶ The Commission recommends adoption of the Covenant, by each church enacting 'its own simple and short domestic "communion law"':¹⁷ (a) to strengthen 'the bonds of unity'; (b) to articulate 'what has to-date been assumed'; (c) to 'make explicit and forceful the loyalty and bonds of affection which govern the relationships between the churches of the Communion'.¹⁸

The Commission, therefore, 'believes that the case for adoption of an Anglican Covenant is overwhelming'.¹⁹ First, the Anglican Communion 'cannot again afford, in every sense, the crippling prospect of repeated worldwide inter-Anglican conflict such as the current crisis. Given the imperfections of our communion and human nature, doubtless there will be more. It is our shared responsibility to have in place an agreed mechanism to enable and maintain life in communion, and to prevent and manage communion disputes'.²⁰ Secondly, the Commission recognises that the adoption of a covenant is not new in the ecumenical context: 'Anglican churches have commonly entered covenants with other churches to articulate their relationships of communion'. Such ecumenical covenants 'provide very appropriate models from which Anglicans can learn much in their own development of inter-Anglican relations'.²¹ Thirdly: adoption of a Covenant is 'a practical need and a theological challenge': '[a] covenant incarnates communion as a visible foundation around which Anglicans can

¹³ WR, paras 22-41.

¹⁴ WR, para 115: 'This may be contrasted with the juridical experience of the particular church, in which enforceable canon law, the servant of the church, seeks to facilitate and order communion amongst its faithful'.

¹⁵ WR, para 116: 'This may be contrasted with the increasing bodies of ecumenical law in Anglican churches facilitating communion relations between Anglicans and non-Anglicans'.

¹⁶ WR, para 117.

¹⁷ See n 8 above.

¹⁸ WR, paras 117, 118.

¹⁹ WR, para 119.

²⁰ In the ecumenical context, the crisis led to condemnation from the Russian Orthodox and Oriental Orthodox churches, and a statement from the Roman Catholic Church that the developments had created 'new and serious difficulties' in Anglican-Roman Catholic relations.

²¹ Eg Church in Wales: Canon 28 September 1995 incorporates into the legal system of the church the terms of communion agreed under the Porvoo Declaration rendering these juridical commitments for the church.

gather to shape and protect their distinctive identity and mission, and in so doing also provides an accessible resource for our ecumenical partners in their understanding of Anglicanism'. Fourthly, '[t]he solemn act of entering a Covenant carries the weight of an international obligation'. If a church changes its mind about the covenantal commitments, 'that church could not proceed internally and unilaterally'. Rather, '[t]he process becomes public and multilateral, whereas unilateralism would involve breach of obligations owed to forty-three other churches. Moreover, the 'formality of ratification by the primates publicly assembled also affords a unique opportunity for worldwide witness'.²²

Fifthly, the Commission considers that a worldwide Anglican Covenant may 'assist churches in their relations with the States in which they exist'. When a church faces pressure from its host State(s) to adopt secular state standards in its ecclesial life and practice, 'an international Anglican Covenant might provide powerful support to the church, in a dispute with the State, to reinforce and underpin its religious liberty within the State'.²³ Finally, as with 'any relational document of outstanding historical importance, which symbolises the trust parties have in each other', 'a Covenant will be susceptible to development through interpretation and practice: it cannot predict the impact of future events'. For this reason it is designed to allow the parties to it to adjust that relationship and resolve disputes in the light of changing circumstances'.²⁴ In short, the Covenant seeks to provide a basic framework for 'an understanding of communion membership' and what expectations and commitments this generates.²⁵

THE TERMS OF THE COVENANT AND THEIR PROVENANCE

The Lambeth Commission proposes a rich understanding of communion, as 'a relationship of "covenantal affection"',²⁶ about: its biblical and divine foundations; the relationship between communion, unity and holiness; the ways in which communion has been played out in Anglicanism; how communion covers a whole range of relationships; and how it generates obligations within the context of interdependence.²⁷ It also proposes a detailed understanding of the autonomy of each member church, not as independence or sovereignty, but as 'freedom-in-relation',²⁸ an idea common to other religious (and secular) traditions.²⁹ The twin ideas of

²² WR, para 119.

²³ The Consultation of Legal Advisers (2002) has identified potential problem areas as to the 'Applicability of Civil Law standards to the Church' (eg): clergy and secular employment law; recourse by church members to secular courts; marriage and polygamy; clergy and political activity.

²⁴ WR, para 119.

²⁵ WR, para 120: the idea is for churches to opt in rather than be excluded.

²⁶ WR, para 45.

²⁷ WR, paras 1-11, 49, 51 and 52.

²⁸ WR, para 80.

²⁹ See N Doe, 'Communion and autonomy in Anglicanism': Lambeth Commission website: www.anglicancommunion.org/ecumenical/commissions/lambeth/documents/200402whatitisfor.pdf

communion and autonomy shape the terms of the Covenant on: Part I: the common identity shared by member churches; Part II: the relationships of communion; Part III: the commitments of communion; Part IV: the exercise of autonomy in communion; and Part V: the management of communion issues.³⁰ The Covenant has twenty-seven Articles, the terms of which are cast as simple propositions, most having a theological content and presented as principles.³¹

The following outlines the key provisions of the proposed Covenant (the text of which is presented mainly *verbatim* in these paragraphs) and, in the footnotes, indicates (illustratively not exhaustively) the provenance of the principles set out in its Articles, where appropriate identifying innovations: the main sources are resolutions of the Lambeth Conference, reports, the laws of member churches, and Anglican ideas developed in dialogue with ecumenical partners. The *Windsor Report* does not, by and large, present the sources for the terms of the Covenant.

First, the Articles in Part I, on common identity, spell out those features of ecclesiality which each Anglican church recognises in each other member church. The approach is one commonly used by Anglicans and their partners in ecumenical agreements.³² Each member church belongs to the One, Holy, Catholic and Apostolic Church of Jesus Christ,³³ participates in the whole apostolic mission of the people of God,³⁴ affirms Holy Scripture, as containing all things necessary for salvation,³⁵ the rule and ultimate standard of faith,³⁶ holds the essentials of the apostolic faith,³⁷ as summed up in the Creeds, and seeks to preach God's Word authentically³⁸ (Art 1). Each church recognises in the other common sacraments and liturgical tradition (Art 2), that is: each church holds and duly administers the sacraments of baptism and eucharist as instituted by Christ,³⁹ and

³⁰ PAC, Preamble.

³¹ Various formulae are used: preceptive, prohibitive, and permissive, in line with the canonical tradition: see eg N Doe, 'The principles of canon law', (1999) 5 Ecc LJ 221.

³² Typically eg *Growth in Communion*: Anglican-Lutheran International Working Group (2000-2002) (Geneva, 2003) para 45: 'Full communion is understood as a relationship between two distinct churches or communions in which each maintains its own autonomy while recognising the catholicity and apostolicity of the other, and believing the other to hold all the essentials of the Christian faith'.

³³ Art 1.1: Lambeth Conference 1930 (hereafter LC), Res 49. The laws of most churches make this claim for themselves: eg Scottish Episcopal Church, Canon 1.1.

³⁴ Art 1.2. See ARCIC, *Church as Communion* (1990) IV.45: see also LC 1998, Res II.1(b)(ii).

³⁵ Art 1.3: Thirty-Nine Articles of Religion, Art. 6; LC 1888, Res 11; LC 1998, Res III.5.

³⁶ Art 1.4: LC 1888, Res 11; LC 1920, Res 9 (Lambeth Quadrilateral); LC 1998, Res 5.

³⁷ Art 1.4: This is adapted from formulae used in ecumenical agreements: as eg n 32; see, however, LC 1888, Res 11 for the spirit of the formula.

³⁸ World Council of Churches, Report (1983).

³⁹ Art 2.1: LC 1888, Res 11; LC 1920, Res 9.

practises the common patterns of Anglican liturgical and ritual tradition,⁴⁰ as adapted to the needs of each generation and particular circumstances of each local ecclesial community.⁴¹ Each church recognises the common ministry and mission of the other (Art 3), namely the threefold ordained ministry of bishops, priests and deacons,⁴² and the ministry of the laity,⁴³ as ministries given by God as instruments of his grace.⁴⁴ Each church shares a common understanding (Art 4) that it belongs to each other,⁴⁵ in mutual reciprocity and forbearance in the Body of Christ⁴⁶; communion does not require acceptance by every church of all theological opinion, sacramental devotion, or liturgical practice that is characteristic of the other.⁴⁷ Every church has the intention to listen, speak, act and strive to obey the gospel, the same concern for a conscientious interpretation of scripture, in the light of tradition and reason,⁴⁸ to be in dialogue with those who dissent from that interpretation,⁴⁹ and to heal divisions.⁵⁰ Each church shares a common autonomous polity with episcopal-synodical government (Art 5).⁵¹

Secondly, Part II expresses the relationships of communion. Communion between Anglicans has a divine foundation (Art 6): it is a gift of God (a communion of three persons), to all member churches,⁵² and animated in the experience of God's work of redemption;⁵³ the divine call to communion⁵⁴ is inviolable, and no member church may declare unilaterally irreversible broken communion with any fellow church.⁵⁵ In turn, churches share communion in terms of their common membership, relation and purpose

⁴⁰ Art 2.2: LC 1998, Res III.8(f).

⁴¹ Art 2.2: LC 1878, Res 1; LC 1908, Res 24, 27; LC 1998, Res II.8(c).

⁴² Art 3.1: LC 1888, Res 11.

⁴³ Art 3.1: LC 1958, Res 94.

⁴⁴ Art 3.1: Porvoo Declaration. Also Art 3.2: each church shares a common life of service in the apostolic mission entrusted by Christ, serving in the world his purposes of mission, justice and peace.

⁴⁵ Art 4.1: *Women in the Episcopate*, Eames Commission (Toronto, 1998) (hereafter WAECC) para 36; ARCIC, *Church as Communion* (1990) IV.45.

⁴⁶ Art 4.1: ARCIC, *The Church as Communion* (1990) IV.45.

⁴⁷ Art 4.2: Bonn Agreement (1931).

⁴⁸ Art 4.3.4: Chicago-Lambeth Quadrilateral (1886-8).

⁴⁹ Art 4.4: LC 1998, Res III.2(c); see also ACC-12, Res 34.3.

⁵⁰ Art 4.4: see eg Church of England, Canon A8; LC 1998, II.6(c).

⁵¹ Art 5: LC 1930, Res 48. Art. 5.1: each member church is autonomous, episcopally led and synodically governed. Art 5 also contains two propositions hitherto unarticulated: Decisions in each church are to be presumed as duly authorised within that church but such decisions do not bind outside that church (Art 5.2). Every church shares the same concern for good government for the fulfilment of its mission and for the common good of the Anglican Communion and the church universal (Art 5.3).

⁵² Art 6.1. See eg Virginia Report (of the Inter-Anglican Theological and Doctrinal Commission), *The Official Report of the Lambeth Conference 1998* (Harrisburg, 1999) 24ff; WAECC, 22, 23; LC 1998, Res III.8(d).

⁵³ Art 6.2. See Inter-Anglican Theological and Doctrinal Commission submission (see WR, n 21).

⁵⁴ Art 6.3. Virginia Report, 24, 26, 27; *Bishops in Communion* (2000) [Church of England] 6.

⁵⁵ Art 6.3. The latter part of this sentence is an innovation (but see WR, para 29).

(Art 7): the Anglican Communion is a community of interdependent churches and consists of relations between each church, the See of Canterbury, and the fellowship of member churches worldwide;⁵⁶ each church acknowledges its Communion membership,⁵⁷ and is constituted by, exists in and receives fullness of life in its relations to the other member churches.⁵⁸ It also means that ordained and lay persons in each church are in personal communion with those of other member churches.⁵⁹ Each church is to serve the purposes of the Communion, which include: (a) achieving greater unity; (b) fostering and protecting a common mind in essential matters; and (c) proclaiming to the world in common witness the good news of the Kingdom of God.⁶⁰ Each church also recognises the process and substance of communion (Art 8): communion, never perfected until God's Kingdom is all in all, involves unity, equality of status, and a common pilgrimage towards truth, each church in partnership with its fellow churches learning what it means to become interdependent and thus more fully a communion.⁶¹

Thirdly, communion involves responsibilities so that each church may be more fully completed in, through and by its relations with other member churches, having regard for their common good (Art 8.3).⁶² The commitments of communion are set out in Part III. Each church has a commitment of loyalty to catholicity and the common good of the Anglican Communion (Art 9); it must act in a manner compatible both with its belonging to the One, Holy, Catholic and Apostolic Church, and with its membership of the Anglican Communion.⁶³ In all essential matters of common concern in the Anglican Communion, no member church is to act without consideration of the common good of the

⁵⁶ Art 7.1. This reflects the models of bilateral communion with Canterbury (LC 1930, Res 49), multipartite communion 'with all churches of the Anglican Communion' (eg Korea, Constitution Fundamental Declaration), and communion with the community of churches (eg Hong Kong, Constitution Preamble: the province is 'in communion with the Anglican Communion').

⁵⁷ Art 7.2. This surfaces in the constitutions of member churches.

⁵⁸ Art 7.2. See also Art 8.3 below. This is a common feature of the perichoretic social doctrine of the Trinity as applied to human persons (eg L Boff, *Trinity and Society* (London, 1988)) and is applied to churches: WR, paras 51, 84.

⁵⁹ Art 7.3. For the notion of personal communion (such as between bishops), in addition to ecclesial communion, see eg Virginia Report, 29.

⁶⁰ Art 7.4. See eg LC 1998, Res III.2(a). Remarkably, however, the Communion has not formally articulated its own strategic purposes: these ideas are, however, implicit in the commitments set out in PAC Part III, and they are commonly expressed as the purposes of individual churches: eg LC 1998, Res II.6(c), New Zealand, Constitution Preamble, Sudan, Declaration of Fundamental Principles, I; South East Asia, Constitution Preamble; North India, Constitution II.I.II.

⁶¹ Art 8.1. WAECC, para 61. See also Art 8.2: Communion subsists in the mutual acknowledgement by churches of their common identity.

⁶² For interdependence, see Virginia Report, 24ff. This is also taken again from Trinitarian doctrine (the idea that the divine communion manifests itself *ad extra*) as applied to human persons: see eg W Kasper, *The God of Jesus Christ* (1989), pp 289ff.

⁶³ Art 9.1.

Communion and fundamental compliance with the Covenant.⁶⁴ Each church has obligations concerning the confession of the faith (Art 10); it must uphold and act compatibly with the catholic and apostolic faith, order and tradition,⁶⁵ and moral values and vision of humanity received by and developed in the fellowship of member churches;⁶⁶ and, primarily through its bishops, ensure that biblical texts are handled respectfully and coherently, building on our best traditions and scholarship believing that scriptural revelation must continue to illuminate, challenge and transform cultures, structures and ways of thinking.⁶⁷ Each church has sacramental commitments (Art 11), and must maintain and administer the sacraments of baptism and eucharist;⁶⁸ welcome members of all other member churches to join in its own celebration of the sacraments; and enjoin its members to eucharistic sharing in a fellow church in accordance with the canonical discipline of that host church.⁶⁹ Each church has apostolic and ministerial commitments (Art 12) to uphold the historic threefold ministry of bishops, priests and deacons;⁷⁰ to recognise the canonical validity of orders duly conferred in every member church;⁷¹ to welcome persons episcopally ordained in any member church to minister in the host church subject to the necessary consents required by and in accordance with the law of that church; and to permit any person ordained in that church to seek ministry in any other member church subject to its law and discipline.⁷² Each minister in each church, especially a bishop, is to be a visible sign of unity and maintain communion within each church and between it, the See of Canterbury and all other Communion churches (Art 13).⁷³ Each host church has commitments to be hospitable to, to welcome and to make available its ministrations to the members of fellow churches (Art 14),⁷⁴ and to mission and prayer, including offering its spiritual, intellectual,

⁶⁴ Art 9.2. LC 1978, Res 11: 'The Conference advises member Churches not to take action regarding issues which are of concern to the whole Anglican Communion without consultation with' a Lambeth Conference or the Primates' Meeting.

⁶⁵ Art 10.1. See LC 1930, Res 49; WAECC, para 35.

⁶⁶ Art 10.1. See ARCIC, *Church as Communion*, IV.45.

⁶⁷ Art 10.2. See LC 1998, Res III.1(b).

⁶⁸ Art 11.1. This surfaces in the laws of churches. See also LC 1888, Res 11; LC 1998, Res III.8(d).

⁶⁹ Art 11.2.3. See *Growth in Communion*, para 45.

⁷⁰ Art 12.1. See Ordinal (1662). This is common in the laws of churches: eg Korea, Fundamental Declarations.

⁷¹ Art 12.2. WAECC, para 35; also a fundamental of full communion in ecumenical relations: see eg *Growth in Communion* para 117. Currently, such recognition is a matter for the member church unilaterally.

⁷² Art 12.3.4. Introduction of formal duties to welcome and permit are new. The requirement of consents to minister is a standard feature of the laws of Anglican churches.

⁷³ The following duties under Art 13 are new: Art 13.2: No minister, especially a bishop, shall: (a) act without due regard to or jeopardize the unity of the Communion; (b) neglect to co-operate with ministers, especially bishops, of member churches for the good of the Communion and Church universal; (c) unreasonably be the cause or focus of division and strife in their church or elsewhere in the Communion; (d) if in episcopal office, unreasonably refuse any invitation to attend meetings of the Instruments of Unity.

⁷⁴ This formal statement is new in Anglicanism, but common in ecumenism (eg Porvoo Declaration); *Growth in Communion*, 45.

and financial resources to assist with the needs of another church or of the Communion as a whole (Art 15).⁷⁵ Each church has commitments in relation to the bonds of mutual loyalty (Art 16), namely, in essential matters of common concern to the Communion, to place the interests and needs of the community of member churches before its own,⁷⁶ in such cases, to make every effort to resolve disputes by reconciliation, mediation or other amicable and equitable means,⁷⁷ and to respect the counsels of the Archbishop of Canterbury, Primates' Meeting, Lambeth Conference, and Anglican Consultative Council,⁷⁸ and the principles of canon law common to the churches of the Anglican Communion.⁷⁹ Finally (Art 17), each church recognises that if a member church enters a relation of communion with a non-member church, this effects a relationship between each member church and the non-member,⁸⁰ to the extent provided in our laws and the regulatory instruments of the ecumenical partner;⁸¹ and before a member church enters any agreement with a non-member church, that church must consult the appropriate Instrument of Unity.⁸²

Part IV deals with the exercise of autonomy in communion.⁸³ First, under Article 18, autonomy is a fundamental principle of Anglicanism;⁸⁴ it is the right of a church to self-government.⁸⁵ An autonomous church has authority ordinarily to make decisions for itself in relation to its own affairs at its own level.⁸⁶ Autonomy expresses subsidiarity: decision-making at the appropriate level.⁸⁷ Autonomy is exercised by a church in the context of the wider community of which it forms part.⁸⁸ Secondly (Art 19), each autonomous church exercises the right to order and regulate

⁷⁵ WAECC, para 35.

⁷⁶ Art 16.1. See ARCIC, *Church as Communion*, para 45.

⁷⁷ Art 16.2. This is a fundamental principle of the canonical tradition.

⁷⁸ Art 16.3. This is a current expectation: eg LC resolutions are 'counsels': LC 1930, Res 48.

⁷⁹ Art 16.4. See n 5 above.

⁸⁰ Art 17.1. This is new, but makes an important statement about the ecumenical intent of the Communion, though it reflects in spirit the duties which member churches have in their own laws to seek or restore visible unity with non-Anglican churches: see eg Jerusalem and the Middle East, Constitution Art 5(ii).

⁸¹ Art 17.1. This is declaratory of current canonical practice in member churches.

⁸² Art 17.2. This is new.

⁸³ Art 18.6. There are limits on the exercise of autonomy imposed by the relationships of communion, the acknowledgement of common identity, the commitments of communion, and the principles applicable to the management of communion affairs.

⁸⁴ Art 18.1. See LC 1930, Res 48; LC 1978, Res 21.3.

⁸⁵ Art 18.2. See eg *Oxford English Dictionary* (2nd edn Oxford, 1989), 'autonomy'.

⁸⁶ Art 18.3. This is autonomy as understood by ecumenical partners: see eg Lutheran: *The Lutheran World Federation as a Communion* (Geneva, 2003); Roman Catholic: Code of Canon Law (1983) Canon 586 (concerning religious institutes); Eastern Catholic: eg D Motluk, 'The code of canons of the Eastern Catholic Churches', 36 *Studia Canonica* (2002) 189 at 196.

⁸⁷ Art 18.4. See Virginia Report, Ch 4.

⁸⁸ Art 18.5. Eg the Scottish Parliament cannot legislate on reserved matters, issues concerning the whole of the wider community of the United Kingdom, of which Scotland is part: United Kingdom matters are reserved to Westminster.

its own affairs through its own system of government and law, and shall be free from control by any decision of any ecclesiastical body external to itself,⁸⁹ in relation to its exclusively internal affairs unless that decision is authorised under or incorporated in its own law.⁹⁰ The validity within each autonomous church of any ecclesiastical act relating to such internal affairs is governed by the law of that church.⁹¹ Thirdly (under Art 20), some affairs treated within each church may have a dual character and consist of mixed elements of internal (domestic) concern and of external (common) concern to the Anglican Communion.⁹² Therefore, autonomy includes the right of a church to make decisions in those of its affairs which may also touch the Anglican Communion of which it forms part,⁹³ provided those decisions are compatible with the interests and standards of the wider Communion (as determined in accordance with Part V);⁹⁴ what touches all should be approved by all.⁹⁵ Fourthly, each church must exercise its autonomy in communion (Art 21): each church has a fiduciary duty to honour and not to breach the trust put in it by the Communion to exercise its autonomy in communion.⁹⁶ In essential matters of common concern, each church must in the exercise of its autonomy have regard to the common good of the Anglican Communion.⁹⁷ In such matters, prior to any action, each church must exercise its autonomy in communion through explanation, dialogue, consultation, discernment and agreement, in the community of interdependent churches with the appropriate Instrument of Unity.⁹⁸ Finally, under Article 22, diversity is a desirable dimension of the catholicity of the church, a feature of the historic development of Anglicanism, and inherent to the particularity of each member church.⁹⁹ Each autonomous church has the greatest possible liberty to order its life and affairs, appropriate to its Christian people in their geographical, cultural and historical context, compatible with the unity and good order of

⁸⁹ Art 19.1,2. This surfaces in the laws of churches: eg North India, Constitution I.IV4: 'an autonomous church and free from any control ... external to itself'.

⁹⁰ Art 19.2. This is a statement of current canonical practices across the Communion.

⁹¹ Art 19.3. This is an innovation, but probably an articulation of current canonical practice.

⁹² Art 20.1. See Virginia Report, 44; LC 1978, Res 21.3.

⁹³ Art 20.2. See ACC-12, Res 34.2: 'provincial authorities to have in mind the impact of their decisions within the wider Communion'.

⁹⁴ Art 20.2.

⁹⁵ Art 20.3. For the *quod omnes tangit* principle of the (conciliar) canonical tradition, see eg Y Congar, 'Quod omnes tangit ab omnibus tractari et approbari debet', 36 *Revue historique de droit français et étranger* (1958) 210; its origin is a law of Justinian 531. See also Ten Principles of Partnership, *Towards Dynamic Mission: Renewing the Church for Mission*, Mission Issues and Strategy Advisory Group II (1993) Principle 8: 'What touches one member touches all'. See too Roman Catholic Code of Canon Law (1983), Canon 119.3: 'what touches all as individuals must be approved by all'.

⁹⁶ Art 21.1; WR, para 40. The fiduciary duty is derived from the canonical tradition of *good faith*.

⁹⁷ Art 21.2. See ACC-12, Res 14.1: 'dioceses and individual bishops not to take unilateral actions ... which would strain our communion'.

⁹⁸ Art 21.3; WR, paras 67-70.

⁹⁹ Art 22.1; WR, paras 36-37, 83, 86, 89.

the Communion.¹⁰⁰ Each church must respect and maintain the autonomy of all churches in the Anglican Communion and must not permit any authority or person within it to intervene in the internal affairs of another member church without its consent.¹⁰¹

Part V, on the management of communion issues, contains the greatest number of innovations. Under Article 23, communion issues are those essential matters of common concern to the member churches of the Communion, and include the affairs, actual and prospective decisions, of a member church which touch fundamentally the fellowship and mission of the Anglican Communion, the relations of its churches, and the compatibility of such decisions with the Covenant and the unity and good order of the Communion. The Instruments of Unity must set out formally their composition, functions, relations one with another, and procedures,¹⁰² for matters arising under this Part. A matter is a communion affair if so designated by the relevant Instrument of Unity, where appropriate in dialogue with any member church involved in the matter, subject to the right of the Archbishop of Canterbury under Article 30. Article 24 sets out the basic functions of the Instruments of Unity.¹⁰³ Each church must designate a person to act as its own Anglican Communion Liaison Officer, appointed to defend the bonds of communion expressed in the Covenant, and accountable to its central assembly; and it must have a system to identify and process within that church contentious communion affairs for submission to that Officer (Art 25). Process in communion matters is as follows. On discernment by the Officer of any contentious communion issue, the Anglican Communion Liaison Officer must liaise with the Primate and the Secretary General of the Anglican Communion. Following such liaison, the Officer or Secretary General may submit the matter to the Archbishop of Canterbury. The Archbishop may issue such guidance as he deems fit or, as appropriate, refer the matter to the Council of Advice (recommended by the *Report*) for guidance and, if necessary,

¹⁰⁰ Art 22.3. This is a new formulation. See however the Vatican II document *Sacrosanctum concilium* (1963), and *De ecclesia eucharistia* (2003).

¹⁰¹ Art 22.3. See LC 1978, Res 1; LC 1878, Res 1; see also LC 1988, Res 72 which reaffirms 'the historical position of respect for diocesan boundaries and the authority of bishops within' them.

¹⁰² This is recommended by the WR: see Appendix I.

¹⁰³ The Article repeats the current position, namely: '(1) The Instruments of Unity serve in communion to discern our common mind in communion issues, and foster our interdependence and mutual accountability, but exercise no jurisdiction over autonomous member churches save to the limited extent provided in this Covenant and the laws of member churches. (2) The Archbishop of Canterbury enjoys a primacy of honour and is a personal sign of our unity and communion, and shall be assisted by a Council of Advice. (3) The Lambeth Conference, under the presidency of the Archbishop of Canterbury, expressing episcopal collegiality worldwide, gathers for common counsel, consultation and encouragement and to provide direction to the whole Communion. (4) The Anglican Consultative Council has such membership and functions as are prescribed by its constitution. (5) The Primates' Meeting, presided over by the Archbishop of Canterbury, assembles for mutual support and counsel, monitors global developments and exercises collegial responsibility in doctrinal, moral and pastoral matters'.

the Primates' Meeting, the Anglican Consultative Council, or the Lambeth Conference to resolve the issue having regard to the common good of the Communion and compatibility with the Covenant (Art 26).¹⁰⁴

The Instruments may exercise 'in communion' this limited jurisdiction, of conflict resolution, under carefully prescribed and exceptional conditions, respecting the autonomy of each church; the matter in question must be a contentious (Art 26) communion issue (Art 23), that is: an essential matter of common concern which touches fundamentally the fellowship and mission of the Communion, and which jeopardizes its unity and good order.¹⁰⁵ This reference model is currently employed in the laws of a number of Anglican churches.¹⁰⁶ The Covenant contains no provision for the expulsion of churches (unlike eg the Lutheran model which enables suspension of member churches of the Lutheran communion):¹⁰⁷ it is an opt-in scheme. Nor does the Covenant create a general competence on the part of the Archbishop of Canterbury to issue binding decisions unilaterally. However, under Article 27, the Archbishop of Canterbury must decide all questions of interpretation of the Covenant, consulting the Council of Advice, and seeking the advice of any other body as he deems appropriate. If approved by the Joint Standing Committee of the Primates' Meeting and Anglican Consultative Council, the decision of the Archbishop is to be regarded as authoritative in the Communion until altered in like manner. The Council of Advice must carry out periodic reviews of the administration of the Covenant for submission to the Archbishop of Canterbury who must act upon such reviews as he deems appropriate, so that the member churches may more completely embrace the life in communion to which all are called by the Lord Jesus Christ.

RESPONSES TO AND IMPLEMENTATION OF THE COVENANT¹⁰⁸

The Lambeth Commission considered it 'imperative for the Communion itself to own and be responsible for the Covenant', and suggested that a 'long-term process, in an educative context, be considered for real debate and agreement on its adoption as a solemn witness to communion: (a) discussion and approval of a first draft by the Primates; (b) submission to the

¹⁰⁴ See LC 1998, Res III.6, for recommendations for an enhanced role for the Archbishop of Canterbury, the Primates' Meeting and the ACC in cases of exceptional emergency incapable of internal resolution in a province (exercised by way of guidance and in consultation).

¹⁰⁵ If the matter were *adiaphora* (things which do not make a difference: WR, para 87) or one amenable to a process of reception (WR, paras 68-70), the local church remains free to act.

¹⁰⁶ In matters of doctrine or liturgy: see eg Central Africa, Constitution Art V; Uganda, Constitution Art II; South East Asia, Constitution Fundamental Declarations, 4ff; Southern Africa, Canon 41.

¹⁰⁷ Lutheran World Federation, Constitution, Art V.

¹⁰⁸ The text discussed here, as it appears in Appendix II of the *Report*, is 'a preliminary draft and discussion document, and at this stage it would be premature for any church to adopt it': WR, para 118.

member churches and the Anglican Consultative Council for consultation and reception; (c) final approval by the Primates; (d) legal authorisation by each church for signing; and (e) a solemn signing by the Primates in a liturgical context'.¹⁰⁹ The Commission stressed that to the extent that the text of the Covenant is 'largely descriptive of existing principles, it is hoped that its adoption might be regarded as relatively uncontroversial',¹¹⁰ but at the same time recognised that adoption of the Covenant may lead to 'complex debate'.¹¹¹

Responses to the Covenant proposal, immediately following publication of the *Windsor Report* in October 2004, ranged from: (a) 'The Windsor Report proposes a new polity for the Anglican Communion, one that translates the poetry of mutual affection and nostalgia for Canterbury into institutional structures that move in the direction of international canon law'; the proposal is 'pernicious: it brings us too close for Anglican comfort to the coercive and authoritarian structures of Rome';¹¹² through: (b) the Covenant would prevent 'unilateral innovation in future or at least make it clear what consequences followed from such unilateralism', whilst there should be 'some caution perhaps over [its] precise details';¹¹³ to: (c) '[t]he new covenanted fellowship of Anglican provinces would be a voluntary organisation', which would 'balance autonomy with international responsibility', itself 'reassuring to partners in the greater ecumenism'; 'if Anglicans are remotely serious about belonging to an international body, this seems to be an excellent blueprint', to enable the Communion to be 'a functional international family'.¹¹⁴

On publication of the *Report*, the Primates' Standing Committee set up a Reception Reference Group to receive and review responses and reactions to the Report from within the Communion and from ecumenical partners. Questions which the Group was to pursue around the provinces included: How would you evaluate the arguments for an Anglican Covenant? How far do the elements in the possible draft represent an appropriate development of the existing life of the Anglican Communion? The Group received 322 responses and, on the basis of these, reported to the Primates' Meeting 2005 that: 'There seemed to be agreement and welcome for the principle of a covenant...However, a number felt more work had to be done on the Appendix "example" given in the Windsor Report before it would be acceptable'; some expressed concern that adoption of the Covenant would turn 'the Anglican Church into a "confessional" church', that the Covenant should be 'less legalistic and more a statement of principle'; but

¹⁰⁹ WR, para 118.

¹¹⁰ WR, para 118.

¹¹¹ WR, para 119.

¹¹² M Adams, 'How to quench the spirit', *Church Times*, 29 October 2004, 9.

¹¹³ *A Guide to the Windsor Report*, commissioned by an International Gathering from around the Anglican Communion meeting at Oxford 19-21 October 2004, para 24 (and p 10).

¹¹⁴ *Church Times*, 22 October 2004, 10.

others thought 'it should remain "a legal authorisation by each church for signing and solemnizing by the primates in a liturgical context"'.¹¹⁵

In turn, the Primates' Meeting, February 2005, recognised 'that serious questions about the content of the proposal for an Anglican Covenant and the practicalities of its implementation mean that this is a longer term process'. The Primates 'were glad to be reminded [by the Lambeth Commission] of the extensive precedents for covenants that many Anglican churches have established with ecumenical partners'. Also, that 'even within our Communion the Chicago/Lambeth Quadrilateral has already been effectively operating as a form of covenant that secures our basic commitment to scripture, the Nicene Creed, the two Sacraments of the Gospel and the Historic Episcopate'.¹¹⁶ However, the Primates were 'cautious of any development which would seem to imply the creation of an international jurisdiction which would override our proper provincial autonomy'.¹¹⁷ Nevertheless, the Primates commended the Covenant 'as a project that should be given further consideration in the Provinces of the Communion between now and the Lambeth Conference 2008'. They requested the Archbishop of Canterbury 'to explore ways of implementing this'.¹¹⁸

CONCLUSION

The proposed Anglican Covenant is not a revolutionary document. For the most part it is a restatement of classical Anglicanism. Generally, of the eighty-five separate provisions, contained in the twenty-seven articles, fifty-nine are derived from existing Anglican texts, and twenty-six are 'new' formulations, but themselves either adapted from existing ecumenical documents (and applied to the Anglican context) or based (explicitly or implicitly) on the recommendations of the Lambeth Commission. Nor is the Covenant an end in itself: it is a means to facilitate the end of ecclesial communion and the family economy. It represents a basic framework, to enable life in communion, by spelling out the expectations (for the first time in a single document) as to what communion means for the member churches, and it does so on the basis of models developed in the ecumenical field. Neither does the Covenant mean the end of provincial autonomy - far from it. The Covenant promotes autonomy. Autonomy will continue to be exercised freely (and thereby enable diversity) with respect to domestic matters of the local church including such matters as have a wider communion dimension about which there is no widespread division. At the same time, however, the Covenant protects the Communion as a family. Its principle, the exercise of 'autonomy-in-communion', operates extraordinarily in relation to matters of fundamental concern to the whole

¹¹⁵ See www.aco.org/commission/reception/report.cfm

¹¹⁶ Primates' Meeting, *Communiqué* 24 February 2005, para 8

¹¹⁷ Ibid para 9. The draft Covenant very carefully preserves provincial autonomy to the greatest possible extent, and the jurisdiction contemplated in Art 26 is severely limited: see above (and n 105).

¹¹⁸ Primates' Meeting, *Communiqué* 24 February 2005, para 8.

community of churches especially those with a potential for divisiveness. The Covenant innovates in relation to the management of inter-Anglican conflict: it provides for a very limited ministry for the Instruments of Unity in serious cases of disagreement which represent a substantial risk to the unity of the Communion (and to ecumenical relations). It is also innovative in so far as, for the first time, by canonical adoption of the Covenant in each church, the essentials of inter-Anglican relations will be a binding commitment on the part of each member church, and not left only to the vagaries of goodwill and unilateralism. This is a modest price to pay to safeguard against the damaging effect of inter-Anglican conflict and to promote the call to Anglicans to live in communion.