

Protestantism in Europe: Juridical perspectives

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INTRODUCTION

It is commonly understood that Protestantism is a movement in Western Christianity which rejects the idea that the Christian faith and life are somehow mediated to humankind through tradition and an institution such as the Roman Catholic papacy. Protestants accept the authority of the Bible as the source and ultimate norm for their teaching. Equally, Protestantism is seen predominantly as a creature of the Reformation, with most Protestant ecclesial communities originating in the religious upheavals of the sixteenth century, following termination of papal jurisdiction in much of north western Europe¹. The spread of Lutheranism, in Germany and the Scandinavian countries, and that of Calvinism in Switzerland, France, Scotland, the Netherlands and parts of Germany, and the rise of the established church in England (both reformed and catholic) is well-documented, as is, in the eighteenth and nineteenth centuries, its expansion throughout the world. In very much a preliminary and rudimentary fashion, the following examines Protestantism in Europe from purely juridical perspectives², on two levels: ecclesiastical (national, continental, and global) and secular (within the context of the civil laws on church-state relations).

I. THE REGULATORY SYSTEMS OF PROTESTANT CHURCHES: NATIONAL LEVEL

Protestant churches in the countries of Europe employ a variety of titles for their internal regulatory systems, titles which are appropriate to the tradition in question. These systems fall into three broad categories: canon law; constitutions; and instruments of church order. Each institutional Anglican church in Europe³, has its own central system of

¹ Many trace the rise of Protestantism to 1517, when Luther offered a series of theses which challenged Roman Catholic teaching. Protestantism took its name from the *Protestatio* issued by the early reformers at the Diet of Speyer in 1529.

² For studies which do not focus on law, see for example: J.T.S. Madeley and Z. Enyedi (eds), *Church and State in Contemporary Europe: The Chimera of Neutrality* (Frank Cass, London, 2003).

³ The Church of England (which has a Diocese in Europe), Scottish Episcopal Church, Church of Ireland,

general law, operative at national level and created by a general synod or other assembly representative of bishops, clergy and laity⁴. It may also have laws at more localised levels (such as diocesan law created by the diocesan synod or other assembly, again composed of bishop, clergy and laity), which to be operative must be consistent with the general law⁵. In terms of general law, some churches have a code of canons only⁶, and others have a constitution⁷, canons⁸, and other regulatory instruments, including: rules and regulations⁹, resolutions¹⁰, and liturgical rubrics found in the service books¹¹. Alongside written laws are less formal and sometimes unwritten sources: customs or tradition¹², the decisions of church courts¹³, the English Canons Ecclesiastical 1603¹⁴, or pre-Reformation Roman canon law¹⁵.

This diversity of legal forms would seem to be characteristic of Protestantism in general. Like other Lutheran churches around the world, with their constitutions and bylaws¹⁶, those in Europe employ a range of regulatory instruments for their self-governance, such as a central church ordinance, acts, or other internal rules at the national level,¹⁷ which may prescribe for the organisation of lower level entities (such as a diocese or parish) – these too must comply with the central church ordinance, and may be responsible for making their own instruments¹⁸. Moreover, like many Reformed Churches, having several regulatory forms¹⁹, some Presbyterian churches employ systems

and Church in Wales; the Spanish Reformed Episcopal Church and the Lusitanian Church in Portugal are also member churches of the Anglican Communion (see below) and come under the metropolitan authority of the Archbishop of Canterbury.

⁴ Those in England, Scotland and Ireland have General Synods and in Wales a Governing Body.

⁵ The Church of England and the Church of Ireland each has two provinces, and the churches in Wales and Scotland consist of a single province, and each province is composed of dioceses. In Wales (eg) decrees of a Diocesan Conference must be consistent with the general law of the church.

⁶ Scottish Episcopal Church and the Lusitanian church (Portugal).

⁷ Wales and Ireland; Spain has *bases*. The Church of England has no written constitution in a single instrument: its laws include (eg) Measures, made by the General Synod with parliamentary and royal approval, and canons.

⁸ England, Ireland, Wales, Spain, and Portugal.

⁹ Wales, Constitution I.1.1: the constitution consists *inter alia* of 'all rules and regulations made from time to time by or under the authority or with the consent of the Governing Body'.

¹⁰ Scotland: the resolutions supplement the code of canons.

¹¹ England: Book of Common Prayer 1662; Wales, Book of Common Prayer 1984.

¹² Scotland, Can. 1.1: episcopal ordination takes place in accordance with 'the law and custom of the ancient church'.

¹³ M. Hill, *Ecclesiastical Law* (3rd edn., Oxford, 2007) para. 1.33.

¹⁴ N. Doe, *The Law of the Church in Wales* (Cardiff, 2002) Ch. 1.

¹⁵ England, Submission of the Clergy Act 1533.

¹⁶ The Lutheran Church of Australia (eg) has a central constitution, bylaws, rules and regulations (which may be amended by its General Synod representative of congregations and pastors): Constitution, Arts. VI-IX; III.(k): one of the objects of LCA is to cultivate uniformity in customs.

¹⁷ L. Friedner, 'Church and state in Sweden 2003', *European Journal for Church and State Research*, 11 (2004) 59 at 61: the church ordinance or *kyrkoordning*. See also the Evangelical Lutheran Church in Bavaria: its polity consists of bishops, council and synod.

¹⁸ Sweden, Diocese of Lund: www.lutheranworld.org/Council/2007/Church_of_Sweden.html.

¹⁹ For example: the Reformed Church of France with its statutory regime and (eg) *Règlement general d'application d'articles de la Discipline*.

of “law”²⁰, perhaps in contrast to other Presbyterian churches worldwide with their systems of “church order”²¹. Other churches use a plethora of regulatory instruments: in Britain, for example, the Methodist Church has its Constitutional Practice and Discipline expressing ‘Methodist Law and Polity’²²; the United Reformed Church has its Scheme of Union and Manual²³; the Quakers have *Queries and Advices*, not laws, but the Quaker Faith and Practice consists of ‘regulations’²⁴; and the Baptist Union of Great Britain and Ireland has a Constitution.

Unlike Anglican churches with their category of “canon law”, the churches of the Lutheran, Reformed, Methodist or Baptist traditions, may be contrasted, needless to say, with the Roman Catholic Church, with its Code of Canon Law, which provides for universal law applying to the whole church worldwide, and “particular laws” applying to a specific territory (a particular church²⁵, such as a diocese) or a group of people (such as a religious community)²⁶. In this respect, it is perhaps the case that Protestant churches are not unlike national Orthodox churches, which themselves may operate a system of internal law in the form of charters²⁷; again, this phenomenon of autonomous legal systems operative nationally is a feature of Orthodoxy worldwide²⁸.

There is considerable but not exact convergence between Protestant churches in Europe with respect to the subjects treated by their regulatory instruments. What differs is the instrument by which subjects are treated. The subject-matter of Anglican laws is extensive: typically, *constitutions* regulate faith and doctrine, territorial, governmental and institutional organisation (legislative, administrative and judicial), the appointment of ministers, discipline, and property; and *canons* address functions of ordained and lay ministers, and liturgical and sacramental matters²⁹. As with other churches of the same

²⁰ J.L. Weatherhead (ed), *The Constitution and Laws of the Church of Scotland* (Edinburgh, 1997).

²¹ Eg Presbyterian Church in America, Book of Church Order, I.26: the constitution consists of its doctrinal standards set out in the Westminster Confession of Faith, the Larger and Shorter Catechisms, and its Book of Church Order. Amendment of the Book of Church Order is effected by the General Assembly with the consent of two-thirds of the Presbyteries; and of the Confession of Faith and Larger and Shorter Catechisms by a three-quarters vote of the General Assembly with the consent of three-quarters of the Presbyteries.

²² Constitutional Practice and Discipline, II (2002) para. 338.

²³ They are accumulated in the URC Manual (2000).

²⁴ Society of Friends: Quaker Faith and Practice (2002).

²⁵ Code, 373; bishops govern dioceses as vicars of Christ not ‘as vicars of the Roman Pontiff for they exercise power...in their own right: *Lumen Gentium*, 27.

²⁶ Code, cc.13,20,23-26: custom is law if it is: approved by the relevant legislator; not contrary to divine law; reasonable; observed by a community capable of receiving a law; observed with the intention of introducing a law; and observed for continuous years.

²⁷ Statutory Charter of the Church of Greece (contained in the secular Law 590/1977).

²⁸ Greek Orthodox Archdiocese of America, Charter (2003), Art. 1: this is an eparchy under the canonical jurisdiction of the Ecumenical Patriarchate of Constantinople, has a Charter according to which the church is ‘governed by the Holy Scriptures, the Holy Canons, this Charter, and the regulations promulgated by it; and, as to canonical and ecclesiastical matters not provided therein, by the decisions thereon of the Holy Synod of the Ecumenical Patriarchate’.

²⁹ N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998) 21-22.

tradition around the world, with their constitutional³⁰, ministerial, liturgical and ritual norms³¹, Lutheran churches have a similar focus, with provisions on, typically, the confession, worship, synods, lower level church structures, elections, parish boundaries, registers, finance and property³². The instruments of Reformed churches deal with equivalent subjects, including detailed rules on worship, catechesis, ministerial appointments, functions and discipline³³. Methodist laws, by way of contrast, focus a great deal on institutional procedure³⁴.

An examination of the subject-matter of Protestant instruments also reveals a wealth of substantive similarities between the churches. In *government*, the principle that authority in the church is legislative, executive and administrative (though churches differ in the distribution of such functions) surfaces in the laws of (for example) Anglican³⁵, Presbyterian³⁶, and United Reformed churches³⁷. In *ministry*, the principle that no minister may be disciplined except by due process (though disciplinary powers are assigned to different institutions) appears in the laws of for instance Reformed³⁸, Anglican³⁹, and Presbyterian churches⁴⁰. These facts may be compared with the Roman Catholic Church: particular laws treat a considerably less extensive range of subjects⁴¹, and local Orthodox churches the laws of which may focus on jurisdiction, mission, institutional organisation, and the officers of the local church, leaving liturgy and sacraments under the regulation of canonical tradition⁴².

The principal purposes of juridical instruments in Protestantism are to facilitate and to order the life and mission of the local church. Typically, for Anglican churches, church law exists `to serve the sacramental integrity and good order of the Church and to assist

³⁰ Lutheran Church of Australia, Const., Arts. I-XII: this deals with confession of faith; objects; membership; ministry; authority and powers; general synod; officers and administration; districts; discipline, adjudication and appeals; bylaws; and alteration of the constitution.

³¹ Evangelical Lutheran Church in Canada, Approved Model Constitution for Congregations, Arts. II and III.

³² Church of Sweden, Church Ordinance.

³³ Reformed Church of France, *Règlement general d'application d'articles de la Discipline*, Tit. I-V.

³⁴ Constitutional Practice and Discipline, II (2002); compare Methodist Church in Southern Africa (hereafter MCSA), *Laws and Discipline* (2000): this contains much personal law.

³⁵ Eg Church of England: law-making vests in the General Synod (Synodical Government Measure 1969); administration of a parish, in the Parochial Church Council (Parochial Church Councils (Powers) Measure 1956); and adjudication, in the courts (Ecclesiastical Jurisdiction Measure 1963).

³⁶ Church of Scotland: legislative, administrative and judicial functions vest in the court of General Assembly.

³⁷ URC (Britain), Manual, B: General Assembly is required to: make regulations; appoint moderators of synods; and `determine when rights of personal conviction are asserted to the injury of the unity and peace` of the URC.

³⁸ For example: the Reformed Church of France, *Règlement general d'application d'articles de la Discipline*, Titre II.20,22.

³⁹ Doe (1998) 86ff.

⁴⁰ Weatherhead (1997) 42ff.

⁴¹ Episcopal Conference of England and Wales (eg) has legislated on (eg) fasting and confirmation.

⁴² Compare the Statutory Charter of the Church of Greece (under the secular Law 590/1977) which deals with collaboration between church and state and, for example, marriage and divorce.

its mission and its witness to the Lord Jesus Christ⁴³. In the Lutheran and Reformed tradition: 'the external juridical order of the church should be at the service of the proclamation of the word'; consequently, 'the external order must be tested ever anew by the confession of faith, and on no level of legal church life can juridical questions be solved without relation to the church's confession'⁴⁴. In short, church law is not a "constitutive", but a "consecutive" and "regulative" element of the reality of a church⁴⁵. Consequently, theological ideas surface explicitly (particularly in descriptive provisions) in Anglican⁴⁶, Reformed⁴⁷, and Presbyterian⁴⁸, churches. In turn, Protestant church law is understood to have a relationship with divine law. For Anglican churches, holy scripture is presented juridically as the ultimate standard and rule in matters of faith⁴⁹, but there is no obvious legal evidence which indicates a general practice that divine law binds directly in a juridical sense, nor that divine law vitiates contrary canon law⁵⁰. Indeed, Protestantism also distinguishes *ius divinum* and *ius humanum*; thus: '[b]ecause divine Church law is a law of the Spirit, a law of grace and love, the ecclesiastical lawgiver has a corresponding legal obligation to mirror this material structure in his human Church law in so far as he can', to provide 'a model for the world'⁵¹. As such, Lutheranism distinguishes structures of human and divine institution: (eg) whereas baptism and preaching are divinely instituted, forms of ministry, church organisation or worship are of human institution⁵². Such ideas are shared with Protestants worldwide⁵³. The notion of divine law also surfaces in the law of the Roman Catholic Church⁵⁴, and Orthodox churches⁵⁵.

⁴³ Church in Wales, Constitution, Prefatory Note.

⁴⁴ Statement made at the Barmen Synod 31 May 1934 on the German Evangelical Church: quoted by M. Reuver, *Faith and Law: Juridical Perspectives for the Ecumenical Movement* (Geneva, 2000) 4.

⁴⁵ *Ibid.*, 3.

⁴⁶ Church of England, Can. B30.1: marriage is 'in its nature a union permanent and lifelong'.

⁴⁷ For example: the Reformed Church of France, *Règlement general d'application d'articles de la Discipline*, Titre I.1 (on membership of the church).

⁴⁸ Church of Scotland, Weatherhead (1997) Ch. 1.

⁴⁹ Doe (1998) 198ff; Thirty-Nine Articles of Religion, Art. 20: 'it is not lawful for the Church to ordain any thing which is contrary to God's Word written'.

⁵⁰ M. Hill, 'Gospel and order', 4 *Ecclesiastical Law Journal* (1996) 659.

⁵¹ W. Steinmuller, 'Divine law and its dynamism in Protestant theology of law', 8 *Concilium* (1969) 13 at 20.

⁵² Confession of Augsburg, Art. V.

⁵³ Lutheran Church of Australia, Constitution Art. II.1; X.1: 'the Holy Scriptures...as the only infallible source and norm for all matters of faith, doctrine and life'; and (eg) disciplinary process is governed by 'scriptural principles'.

⁵⁴ Eg cc.331 (papal office); 1249: the faithful are obliged *ex lege divine tenentur* to do penance; 207: *ex divina institutione*, among Christ's faithful there are sacred ministers and lay people; 24 (custom).

⁵⁵ Greek Orthodox Archdiocese of America, Charter, Art. 1.

II. ECUMENICAL ALLIANCES BETWEEN PROTESTANT CHURCHES IN EUROPE

Protestant churches in Europe also engage in ecumenical alliances at the national, regional and continental levels. These alliances, and the new ecclesial communities they generate, may themselves be governed by regulatory instruments. The following is illustrative, and not exhaustive, of some of the instruments that have developed.

National Alliances: In most of the countries of Europe, churches affiliate in various councils or other such institutional structures; and the affiliation develops its own regulatory regime⁵⁶. This is very much in keeping with the traditional use by Protestants of covenantal (or federal) theology which translated scriptural notions of covenant to ecclesiastical organisation⁵⁷. For the early Protestant reformers, the object of the “covenant of human society” (*foedus humanae societatis*) was to address the disunity which resulted from the Fall⁵⁸. The aim of organisational covenants, therefore, is to associate. As such, an ecclesiastical association is a ‘symbiosis initiated by a special covenant (*pactum*) among the members for the purpose of bringing together and holding in common a particular interest’; members associate for *communicatio* to uphold ‘the plan of social life set forth in covenanted agreements’⁵⁹.

For example, the Evangelical Church in Germany (EKD) is a community of twenty-three Lutheran, Reformed and United churches. Ecclesiastical structures are based on federal principles at all levels. Each local congregation is responsible for Christian life in its own area, while each regional church has its own particular features and retains its autonomy. The EKD respects and protects the autonomy of its member churches. At the same time, the EKD carries out joint tasks which its member churches have entrusted to it. The institutional authorities of the alliance are organised and elected on democratic lines in accordance with the Constitution of the EKD. Under this, the Synod (which has law-making authority)⁶⁰, the Council and the Church Conference, each carries out the

⁵⁶ The Protestant Federation in France, consisting of Lutheran, Reformed and other Protestant churches, was formed in 1905; the Federation of Evangelical Religious Entities of Spain was formed in 1956; and the Federation of Evangelical Churches in Italy was formed in 1967: see G. Long, ‘Entre la grâce et la force de la loi: la naissance des fédérations protestantes en France, en Espagne et en Italie’, in B. Basdevant-Gaudemet (ed), *L’administration des cultes dans les pays de l’Union Européenne* (Peeters, Leuven 2008) 61-80; see also Churches Together in Britain and Ireland: this has a Constitution.

⁵⁷ For the idea in the late 16th century work of the Anglican jurist-theologian Richard Hooker, see A.S. McGrade (ed), *Richard Hooker and the Construction of Christian Community* (Tempe, Ariz.: Medieval and Renaissance Studies, 1997).

⁵⁸ For Eisermann (d. 1558), see J. Witte, *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge, 2002) 142-143.

⁵⁹ Althusius, *Politica methodice digesta* (1603) 2.3.4.8: the goal of social and political union is federal or covenantal, seeking communion (*communicatio*) through “sharing” material and spiritual goods (*things*), labours and occupations (*services*), and pious discipline (*common rights*): O. O’Donovan and J.L. O’Donovan (eds), *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100-1625* (Cambridge, 1999) 757ff.

⁶⁰ The EKD Synod usually convenes once a year; it is held in a different place each time; it is elected for six years and headed by a seven-person governing board, the Presidium; its function is to discuss issues con-

functions prescribed by the Constitution. The Synod has nine permanent committees whose members are elected by the Synod; these committees include one on legal affairs⁶¹. The Synod elects the Council jointly with the Church Conference for six years at the second session in its term of office⁶².

The EKD may be compared with the position in Wales, in the United Kingdom, where an ecumenical covenant creates an ecclesial Protestant community which falls short of an institutional church. The covenant has been entered between the Calvinistic Methodist Church of Wales or the Presbyterian Church of Wales, the Methodist Church, the United Reformed Church of England and Wales (Congregational and Presbyterian), the Union of Welsh Independents, churches belonging to the Baptist Union of Great Britain and Ireland, and the (Anglican) Church in Wales (and the covenant has been incorporated into the law of the latter): the autonomy of each covenanting church is protected⁶³. This aspirational covenant places seven commitments on the churches; for example, to work together for justice and peace, and for the spiritual and material well-being and personal freedom of all people; to overcome the ecclesial divisions which impair witness; to seek a form of common life; to seek an agreed pattern of ordained ministry; and to seek a mode of church government which will preserve the positive values for which each has stood. This is so that the common mind of the church may be formed and carried into action through constitutional organs of corporate decision at every level of responsibility⁶⁴.

Regional Alliances: Ecumenical dialogue between autonomous national Protestant churches at the regional level may also generate the creation of instruments with a juridical form. These may enable either full communion between the participating churches, or a relationship of inter-communion (short of full communion). The Lutheran churches of the Nordic and Baltic countries and the Anglican churches of Britain and Ireland have reached (under the Porvoo initiative) a relationship of full communion based on a common understanding of the nature and purpose of the church, a fundamental agreement in faith, and an agreement on episcopacy⁶⁵. Under the initiative, there are

cerning the EKD and to pass resolutions. These include church laws (such as the budget, labour legislation, data protection), submissions by the Council and the Church Conference, and in some cases motions and petitions. Normally, each synod session has a theme prepared by a committee. In recent years themes have included the Community of Women and Men in the Church, Faith Today, and Genetic Engineering.

⁶¹ There are committees for: Scripture and Proclamation of the Gospel; Social Services, Mission and Ecumenical Relations; Legal Affairs; Church, Society and State; Education and Young People; Europe; The Environment; and the Budget and Nominations.

⁶² www.ekd.de/english/2169.html.

⁶³ Church in Wales, Can. 1-5-1974: nothing in the covenant or its canon law affects or is deemed to affect the faith, discipline, articles, doctrinal statements, rites, ceremonies or formularies of the Church in Wales. For Enfys (the Commission of Covenanted Churches in Wales), see *The Ecumenical Face of the Province*, produced by the Division for Ecumenism, and published by the Board of Mission of the Church in Wales (1999) 9.

⁶⁴ Church in Wales, Can. 1-5-1974, Sched. 1, para. 7.

⁶⁵ The Porvoo churches are: the Church of Denmark, Church of England, Estonian Evangelical-Lutheran Church, Evangelical-Lutheran Church of Finland, Evangelical-Lutheran Church of Iceland, Church of Ire-

acknowledgements and commitments. For example, first, these parties recognise one another as churches belonging to the One, Holy, Catholic and Apostolic Church of Jesus Christ, and as truly participating in the apostolic mission of the whole people of God. They acknowledge that, in each of them, the Word of God is authentically preached, and the sacraments of baptism and eucharist are duly administered. Each church shares in the common confession of the apostolic faith. The churches recognise that, in all of them ordained ministries are given by God as instruments of his grace: as such, these ministries possess not only the inward call of the Spirit, but also Christ's commission through his body, the church. Secondly, the churches commit themselves, for example: (1) to share a common life in mission and service, to pray for and with the other churches, and to share resources; (2) to welcome members of the other churches to receive sacramental and other pastoral ministrations; (3) to regard baptized members of the other churches as members of their own church; (4) to welcome persons episcopally ordained in all the churches to the office of bishop, priest or deacon to serve in that ministry in all the churches without re-ordination⁶⁶; and (5) to establish appropriate forms of collegial and conciliar consultation on significant matters of faith, order, life and work⁶⁷.

A somewhat different initiative (of inter-communion) is the Reuilly Agreement entered by the Church of the Augsburg Confession of Alsace and Lorraine, Evangelical-Lutheran Church of France, Reformed Church of Alsace and Lorraine, Reformed Church of France, and the (Anglican) Church of England, Church of Ireland, Scottish Episcopal Church and Church in Wales. The acknowledgements in the agreement largely replicate those in the Porvoo scheme. The churches are committed to a common life and mission and closer fellowship in as many areas of Christian life and witness as possible. As to the future, the churches agree, for example: (1) to seek a common life in mission and service, to pray for and with one another, and to work towards sharing spiritual and human resources; (2) to welcome their members to worship and to receive pastoral ministrations in each of the churches; (3) to welcome their members into the congregational life of each church; (4) to encourage shared worship; (5) to welcome ordained ministers of each church to serve in the other, in accordance with the discipline of the respective churches, to the extent made possible by the agreement; and (6) to continue theological discussions on the outstanding issues which hinder fuller communion, whether bilaterally or in a wider European, ecumenical framework. Special provision is made for the celebration of the eucharist: whilst eucharistic hospitality is possible, as yet reciprocal arrangements do not include the interchangeability of ministers; and any eucharistic rite used should be that of the church to which the presiding minister belongs⁶⁸.

land, Evangelical-Lutheran Church of Latvia, Evangelical-Lutheran Church of Lithuania, Church of Norway, Scottish Episcopal Church, Church of Sweden, and Church in Wales.

⁶⁶ They may serve by invitation and in accordance with any regulations in force in the host church.

⁶⁷ The agreement has been incorporated into the laws of (eg) the Church in Wales: Can. 28-9-1995.

⁶⁸ When eucharistic worship is judged to be appropriate, it may move beyond eucharistic hospitality for individuals; the participation of ordained ministers would reflect the presence of two or more churches ex-

Continental Alliances: Protestant churches may engage in continental ecumenical alliances. They may do so among themselves (such as the Community of Protestant Churches of Europe) or between themselves and churches outside the Protestant tradition (as with *Charta Oecumenica* 2001, with Roman Catholics and Orthodox).

Approximately one hundred Lutheran, Reformed, United and Methodist churches belong to the Community of Protestant Churches of Europe (set up originally in 1973 as the Leuenberg Church Fellowship). They have adopted the “Agreement between Reformation Churches in Europe”, otherwise known as the Leuenberg Agreement⁶⁹.

This provides for fellowship in word and sacrament, on the basis of a common understanding of the gospel as expounded in the agreement. They commit themselves to common witness and service at local, regional and European levels and to continuing theological work⁷⁰. Besides the classical Reformation churches, pre-Reformation churches such as the Waldensians (Italy) and the Brethren (Czech Republic), and five South American churches emanating from migration, belong to the CPCE. Seven Methodist churches are part of it, and five Scandinavian Lutheran churches have participated since 1973, without signing the agreement⁷¹. The CPCE serves to promote the unity and community of the Protestant churches through joint theological doctrinal conversations. It also represents the positions of the churches on important spiritual and social challenges such as the question of a just war, the Christian understanding of freedom, and the relationship of church, state, people and nation. The CPCE has a loose organizational structure for the sake of flexibility⁷². Indeed, it is understood that it is perfectly acceptable to have a state of “reconciled diversity” in which there is fellowship between churches that maintain their own distinct identity and traditions⁷³. General assemblies take place about every six years, at which future work is outlined, new subjects for theological conversations are determined, and a new executive committee is elected. The executive committee, led by the presidium, is responsible for the work between the general assemblies⁷⁴.

pressing their closer unity in faith and baptism and demonstrate that ‘we are still striving towards making more visible the unity of the One, Holy, Catholic and Apostolic Church’; nevertheless, such participation still falls short of the full interchangeability of ministers; the rite should be that of the church to which the presiding minister belongs, and that minister should say the eucharistic prayer.

⁶⁹ The agreement preamble, referring to the Augsburg Confession, VII, confirms: “In the view of the Reformation it follows that agreement in the right teaching of the gospel and in the right administration of the sacraments is the necessary and sufficient prerequisite for the true unity of the church”.

⁷⁰ Documents produced since then include the study *The Church of Jesus Christ* (Frankfurt am Main, 1994), the first concerted Protestant ecclesiology on the European level. The growing sense of community of the member churches and the claim formulated at the last general assembly in 2001 in Belfast, Northern Ireland, to bring forward a Protestant voice in Europe, is clearly expressed through the new name “Community of Protestant Churches in Europe” (as from 1 November 2003).

⁷¹ Out of these, two churches (the Evangelical Lutheran Church of Denmark and the Church of Norway) have lately signed the Leuenberg Agreement.

⁷² N. Doe, *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (Canterbury Press, London, 2008) 87,101,189n.

⁷³ *The Church of Jesus Christ* (1996).

⁷⁴ The secretariat, operating under the direction of the executive committee, has been located in the head office of the Union of Evangelical Churches in Berlin from 1987 to 2007. Since 2007 the CPCE office is

Charta Oecumenica is an agreement between the Conference of European Churches and the Roman Catholic Council of European Bishops' Conferences. The agreement has 'no magisterial or dogmatic character, nor is it legally binding under church law'⁷⁵. Amongst its objects is the promotion of 'the value of marriage and the family, the preferential option for the poor, the readiness to forgive, and in all things compassion'. The alliance commits itself: 'to seek agreement with one another on the substance and goals of our social responsibility, and to represent in concert, as far as possible, the concerns and visions of the churches vis-à-vis the secular European institutions; to defend basic values against infringements of every kind; to resist any attempt to misuse religion and the church for ethnic or nationalist purposes'⁷⁶. Dialogue itself is a commitment in *Charta Oecumenica*: to continue in conscientious, intensive dialogue at different levels between the churches; to examine how official church bodies can receive and implement the findings gained in dialogue; and in the event of controversies, particularly when divisions threaten in questions of faith and ethics, to seek dialogue and discuss the issues together in the light of the Gospel⁷⁷.

III. THE GLOBAL AFFILIATIONS OF PROTESTANT CHURCHES

Protestant regulatory instruments in Europe should also be understood in their wider international contexts. Most Protestant churches, of the different traditions, enjoy a global affiliation with international ecclesial communities. These too have a juridical order, but this preserves the autonomy of the member churches as well as, therefore, the validity and operation of the legal systems of the member churches.

Six churches in Europe belong to the worldwide Anglican Communion. The Communion has no formal body of law applicable to its forty-four member churches in communion with the See of Canterbury; each church is autonomous with its own legal system. The Communion is held together by "bonds of affection" and by loyalty to scripture, creeds, baptism, eucharist, historic episcopate, and the Archbishop of Canterbury, Primates Meetings, Lambeth Conference, and Anglican Consultative Council - but these four institutions have no competence to make laws binding on the churches of the Communion⁷⁸. However, a statement of principles of canon law common to the churches of the Communion, induced from the similarities between their legal systems,

located in Vienna. It has working relations with the World Council of Churches, Conference of European Churches, Lutheran World Federation, and World Alliance of Reformed Churches.

⁷⁵ CO (2001) Preamble: its authority derives from 'voluntary commitments'.

⁷⁶ CO (2001) Art. III.

⁷⁷ CO (2001) Art. II.6: 'Rather than seeing our diversity as a gift which enriches us, however, we have allowed differences of opinion on doctrine, ethics and church law to lead to separations between churches, with special historical circumstances and different cultural backgrounds often playing a crucial role'; 'consensus in faith must be continued at all costs'.

⁷⁸ See generally N. Doe, *Canon Law in the Anglican Communion* (Oxford, 1998).

was launched at the Lambeth Conference in 2008⁷⁹. Moreover, the Communion is currently debating adoption by each church of a common Anglican Covenant to regulate their relationships; drafts have been formulated⁸⁰.

Lutheran churches in Europe may belong to the Lutheran World Federation. This is 'a communion of churches which confess the triune God, agree in the proclamation of the Word of God and are united in pulpit and altar fellowship'. The Federation is "organized under" its constitution (and supplementary bylaws) as an 'instrument of its autonomous member churches', and helps them collaborate⁸¹. Similarly, the World Alliance of Reformed Churches, 'a fellowship of Congregational, Presbyterian, Reformed and United churches'⁸², adopted its present Constitution in 1970, and this protects the autonomy of member churches⁸³. The World Methodist Council, a manifestation of a "fellowship" of Methodists worldwide, has a constitution but the Council has no legislative authority over member churches⁸⁴. Likewise, the Baptist World Alliance, 'extending over very part of the world, [is] an expression of the essential oneness of Baptist people in...Christ'; its constitution 'recognizes the traditional autonomy and interdependence of Baptist churches and member bodies'⁸⁵. (The ecumenical World Council of Churches has a constitution and rules⁸⁶).

These global Protestant ecclesial communities, through their own regulatory instruments, seek to effect unity and common action amongst the European and other member churches. One strategic goal of the constitution of the Lutheran World Federation is to unite the churches, strengthen them, and help them 'to act jointly in common tasks'⁸⁷. Similar goals appear in the constitutions of the World Alliance of Reformed Churches⁸⁸, World Methodist Council⁸⁹, and Baptist World Alliance⁹⁰. In terms

⁷⁹ See: The Principles of Canon Law Common to the Churches of the Anglican Communion, Anglican Communion Legal Advisers Network (Anglican Communion Office, London, 2008). In 2001 the Primates Meeting endorsed suggestions in a paper: N. Doe 'Canon law and communion', 6 *Ecclesiastical Law Journal* (2002) 241; these were tested at a Consultation of Legal Advisers and its conclusions were endorsed by the Primates in 2002: see N. Doe, 'The common law of the Anglican Communion', 7 *Ecclesiastical Law Journal* (2003) 4; meetings of the Network drafting group were held in 2005 and 2006 with further amendments to the draft following a Network consultation in 2008.

⁸⁰ Lambeth Commission on Communion, *Windsor Report* (London, 2004) para. 113ff; see N. Doe, *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (London, 2008).

⁸¹ Constitution, Arts. I-IV. See generally N. Lossky, J.M. Bonino, J. Pobee, T.F. Stransky, G. Wainwright and P. Webb (eds), *Dictionary of the Ecumenical Movement* (World Council of Churches Publications, Geneva, 2002) 722.

⁸² Constitution, Preamble, Art. I.2: and those in the tradition of Valdes and Hus (predating the Reformation). See also N. Lossky, *et al* (eds), *Dictionary of the Ecumenical Movement* (2002) 1217.

⁸³ Constitution Art. IV: 'None of these provisions shall limit the autonomy of any member church'.

⁸⁴ Constitution: Constitutional Practice and Discipline of the Methodist Church (Britain), 782-3.

⁸⁵ Constitution, Art. II.

⁸⁶ Constitution and Rules of the World Council of Churches (as amended 2006).

⁸⁷ Constitution, Arts. I-III, V.

⁸⁸ Constitution, Arts. I.3 and III (1-9): they include: to unite the member churches in common service wherever needed and practicable; and to aid member churches which may be weak, oppressed or persecuted; and to contribute to the ecumenical movement.

⁸⁹ Constitution: Constitutional Practice and Discipline of the Methodist Church (Britain), pp. 782-3.

of subject-matter, the instruments differ considerably. The statement of principles of canon law common to churches of the Anglican Communion treats church order, communion relationships, government, ministry, doctrine, liturgy, rites, property and ecumenism⁹¹; and the proposed Anglican covenant provides for common faith, common mission, and the maintenance of communion⁹². By way of contrast, the instruments of other Protestant global communities are minimalist and somewhat more organisational (or institutional). The constitution of the Lutheran World Federation deals with: doctrinal basis; nature and functions; scope of authority; membership and affiliation; organisation; the assembly; the council; national committees; officers and secretariat; finance; and amendments and bylaws⁹³. Likewise, the constitution and bylaws of the World Alliance of Reformed Churches addresses: membership, purposes, general council, executive committee, officers, departments, organisation of areas, and amendments⁹⁴. The constitutions of the Baptist World Alliance⁹⁵, and of the World Council of Churches⁹⁶, are similar.

The extent to which, and the ways in which, regulatory instruments are binding vary as between the different Protestant traditions. The principles of canon law common to the churches of the Anglican Communion do not bind those churches internationally but are of persuasive authority⁹⁷. The instruments of other global ecclesial communities bind the institutional churches (rather than the faithful of each member church) on the basis of their formal acceptance by churches on admission to membership (eg): “acceptance” of its constitution is required for membership of the Lutheran World Federation⁹⁸. In turn, full members have voting rights in the governing bodies of (eg) the World Alliance of Reformed Churches, but associate members do not⁹⁹. Some instruments require member churches to take those instruments into account at the local level¹⁰⁰. The instruments commonly contain disciplinary provisions. For example, in the Lutheran World Federation, the Assembly may suspend or terminate the membership of a church by a two-thirds vote of the delegates¹⁰¹. The Federation suspended the memberships of two

⁹⁰ Bylaws of the General Council (2002).

⁹¹ N. Doe and R. Sandberg, ‘The “state of the union”, a canonical perspective: principles of canon law in the Anglican Communion’, 49.2 *Sewanee Theological Review* (2006) 234.

⁹² *Windsor Report* (2004), App. I.

⁹³ The constitution is organised on the basis of 14 Articles; the bylaws treat equivalent subjects.

⁹⁴ The constitution has 12 articles; the bylaws deal with associated subjects.

⁹⁵ It covers: objective; method of operations; membership Baptist World Congress; General Council; executive committee; officers departments; regional fellowships; amendments (as do its bylaws).

⁹⁶ Its 7 Articles treat: basis; membership; purposes and functions; authority; organisation; other ecumenical organisations; and amendments; its Rules treat eg the responsibilities of membership.

⁹⁷ See above, n. 90.

⁹⁸ Constitution, Art. V.

⁹⁹ Constitution. I.2,4; II.2.; Bylaws 1.

¹⁰⁰ Community of Protestant Church in Europe, Leuenburg Agreement 1973, Arts. 42-46.

¹⁰¹ Constitution, Art. V; Bylaws, 2.

churches in 1977 (which have since been restored), as did the World Alliance of Reformed Churches in 1982 (though it was lifted conditionally in 1997).

These Protestant approaches to the engagement of European (and other) churches in a global enterprise by way of international instruments, which protect the autonomy of their member churches, are very different from the Roman Catholic Church (with its global Code of Canon Law). They also differ from the Orthodox Church worldwide, which is a family of self-governing churches with no centralised organisation¹⁰². It has no universal code (though whether Orthodox law should be codified is the subject of debate)¹⁰³. The “law of the church” globally is, rather, “her canonical tradition”, ‘an outgrowth of the holy canons’¹⁰⁴, contained in several collections - the most widely-used today in Greek-speaking Orthodox churches is the *Pedalion*¹⁰⁵. Nevertheless, some Orthodox churches at the inter-church level organise themselves on the basis of a *constitution*, enabling churches to share common tasks (but still preserving the jurisdictional autonomy of the member churches)¹⁰⁶.

IV. PROTESTANT CHURCH LAW AND CIVIL LAW

The relationships between Protestant churches and the States (and their civil laws) may be approached in terms of the classical understanding of church-state models in Europe – state-church systems, separation systems and hybrid or cooperationist systems¹⁰⁷. First, some Protestant churches enjoy the legal status of state-churches, there being close links between the state and a particular Protestant church: such links are often defined by constitutional law¹⁰⁸. As is well-known, in the north of Europe, ecclesiastical arrangements are often in the form of a state church ‘which embodies, in benign form, national as well as religious identity’¹⁰⁹. For example, in Denmark, Article 4 of the Danish Constitution of 1849 (as amended) provides: ‘The Evangelical Lutheran Church shall be the Folk Church of Denmark, and as such shall be supported by the State’. It has been said that the Danish National Church is a ‘state agency for administration’ and not ‘a legal organ with autonomy’; it has no synod, no legal personality and is not a corporate

¹⁰² T. Ware, *The Orthodox Church* (London, 1963, reprinted 1991) 15.

¹⁰³ Metropolitan Bartholomaios, ‘A common code for the Orthodox churches’, *Kanon* I (1973) 45-53.

¹⁰⁴ Patsavos, L., ‘The canonical tradition of the Orthodox Church’, in F.K. Litsas (ed), *A Companion to the Greek Orthodox Church* (New York, 1984) 137-147.

¹⁰⁵ The Rudder (first edition 1800), from the metaphor of the church as a ship: P. Rodopoulos, *An Overview of Orthodox Canon Law* (Rollinsford, New Hampshire, 2008) 47ff.

¹⁰⁶ The Standing Conference of Canonical Orthodox Bishops in the Americas which preserves the jurisdictional autonomy of the member churches: Constitution, Art. II; the churches are: Greek, Antiochian, Serbian, Romanian, Bulgarian, Carpatho Russian, Ukrainian, Albanian.

¹⁰⁷ The classification has been proposed by (eg) G. Robbers (ed), *Church and State in the European Union* (2nd edn., Baden-Baden, 2004) 577. The classification has been subject to severe criticism: R. Sandberg and N. Doe, ‘Church-state relations in Europe’, *Religious Compass* 1/5 (2007) 561-578.

¹⁰⁸ Protestant churches are state-churches in England, Denmark, Finland, and (historically) Sweden.

¹⁰⁹ G. Davie, *Europe: The Exceptional Case: Parameters of Faith in the Modern World* (London, 2002) 12.

body; it still has no separate synodical constitution (as envisaged in Article 166 of the Constitution); the state Ministry of Ecclesiastical Affairs determines rules about membership, and new parishes, and it approves the appointment and dismissal of clergy who have the status of civil servants. Local parishes operate as state agencies which perform various administrative functions for the civil administration; and its members pay a church tax¹¹⁰. Whereas the Danish model is one of state control, the Finnish Evangelical Lutheran Church has a position with a greater degree of autonomy not dissimilar to that of the Orthodox Church in Greece¹¹¹, where Protestant churches function are associations under private law¹¹².

Secondly, Protestant churches may enjoy legal positions under the civil laws in separation systems. For example, in France, under the *laïcité* principle and the separation law of 1905, institutional Protestant churches may acquire the status of *associations cultuelles* (and thereby are able to hold property); and the Protestant Federation of France is commonly in informal dialogue with state institutions (such as the *Bureau des Cultes*). However, in Alsace-Moselle (which has a system of recognised churches supported financially by the State), Lutheran and Reformed church have the status of *cultes statutaires*¹¹³; and here Lutheran diocesan bishops are directly appointed by the French president, and the chairman of the directory of the Lutheran Church and its ecclesiastical inspectors by the prime minister¹¹⁴. In Ireland, Protestant churches enjoy the legal status of voluntary associations, and primary and secondary education (for example) is predominantly denominational, with Protestant schools fulfilling a major educational function in Irish society¹¹⁵.

Thirdly, Protestant churches may have agreements (or other concordat-like arrangements) with their host States. Such agreements are entered to define church-state relations, to guarantee religious freedom, and to make provision for collaboration in matters of common concern. Protestant churches (Lutheran, Reformed, and Methodist) are parties to these agreements¹¹⁶. Such agreements are particularly prevalent in Germany¹¹⁷. In Italy, under Article 8 of the Constitution, all religious denominations may

¹¹⁰ Robbers (2004) 55-76.

¹¹¹ See Sandberg and Doe (2007) 564.

¹¹² K.G. Papageorgiu and C. Papastathis, 'Formes de collaboration conventionnelle ou non-conventionnelle entre l'état et les communautés religieuses en Grèce', R. Puza and N. Doe (eds), *Religion and Law in Dialogue: Covenantal and Non-Covenantal Cooperation between State and Religion in Europe* (Leuven, 2006) 65 at 74.

¹¹³ B. Basdevant-Gaudemet and F. Messner, 'Entités religieuses comme personnes juridiques-France', in L. Friedner (ed), *Churches and Other Religious Organisations as Legal Persons* (Leuven, 2007) 100 at 104.

¹¹⁴ F. Messner, 'The autonomy of religious confessions in France', in H. Warnink (ed), *The Legal Position of Churches and Church Autonomy* (Leuven, 2001) 111 at 116.

¹¹⁵ P. Colton, 'Religion and law in dialogue: covenantal and non-covenantal cooperation of state and religion in Ireland', in Puza and Doe (2006) 93.

¹¹⁶ See generally Puza and Doe (2006).

¹¹⁷ In recent years in Germany agreements have been entered between the Protestant church and the state *länder*: Saxony-Anhalt (1993), Mecklenburg-West Pomerania (1994), Saxony (1994), Thuringia (1994) and Brandenburg (1996); as well as concordats with the Roman Catholic Church: Saxony (1996); Thuringia

enter agreements (*intese*) with the State providing a special legal status which seeks to accommodate their specific needs; agreements have been signed with, for example, the Waldensian Church (1984), the Union of Evangelical Christian and Baptist Churches (1993), and the Evangelical Lutheran Church (1993)¹¹⁸. A not dissimilar regime pertains in Spain, where, under the Religious Freedom Act 1980 (Art. 7), agreements have been signed with (eg) the Federation of Evangelical Religious Entities of Spain (1992). Moreover, across Europe, agreements have also been established between alliances of churches and the state; in Poland, for example, there is an agreement with an alliance of *inter alia* the Lutheran, Evangelical Reformed, United Methodist, and Baptist Union of Poland¹¹⁹.

The complexities of the relationship between institutional churches and their host States may be illustrated by the case of the United Kingdom¹²⁰. In England, the Church of England is 'established according to the laws of this realm under the Queen's Majesty'¹²¹. The incidents of establishment are well-known: the monarch has 'supreme authority over all persons in all causes, as well ecclesiastical as civil'¹²²; the monarch is empowered by Act of Parliament to appoint bishops¹²³; the Measures of the General Synod (on parliamentary approval and royal assent) have the same force and effect as Acts of Parliament¹²⁴; and people who are resident in its parishes have rights to baptism, holy communion, marriage and burial¹²⁵. In Scotland, the relation of the (Presbyterian) Church of Scotland to the State is regulated by the parliamentary Church of Scotland Act 1921: the church is 'a national Church representative of the Christian Faith of the Scottish people...acknowledges its distinctive call and duty to bring the ordinances of religion to the people in every parish of Scotland through a territorial ministry'¹²⁶. One of the aims of the Act is 'to declare the right of the Church to self-government in all that concerned its own life and activity', and its courts are recognised in civil law as public *fora*¹²⁷.

However, other churches function in civil law as voluntary associations and their internal regulatory instruments have the status in civil law of terms of a contract entered

(1997); Mecklenburg-West Pomerania (1997), and Brandenburg (2003); and agreements with smaller religious communities (eg in Lower Saxony there are agreements with the Free Religious Community of Lower Saxony (1970), the Evangelical Methodist Church in North West Germany (1978), the Association of Jewish Congregations of Lower Saxony (1983); and an agreement between the Federal Republic of Germany and the Central Council of Jews (2003).

¹¹⁸ M. Ventura, in Puza and Doe (2006) 115 at 121n.10.

¹¹⁹ M. Rynkowski, Puza and Doe (2006) 135ff.

¹²⁰ See R. Sandberg, 'The Legal Status of Religious Denominations and State-Church Relations in the UK' in *Droit des Religions en France et en Europe: Recueil de Textes* (Bruylant, Bruxelles, 2006).

¹²¹ Canon A1.

¹²² Canon A7.

¹²³ Appointment of Bishops Act 1533.

¹²⁴ Church of England (Assembly (Powers) Act 1919, ss.3,4.

¹²⁵ N. Doe, *The Legal Framework of the Church of England* (Oxford, 1996); M. Hill, *Ecclesiastical Law* (2nd edn., Oxford, 2001).

¹²⁶ Schedule, Articles Declaratory.

¹²⁷ *Ballatyne v Presbytery of Wigtown* (1936) SC 625.

into by the members. In Wales, the (Anglican) Church in Wales is a disestablished church (as is the Church of Ireland in Northern Ireland)¹²⁸; its laws are part of a statutory contract (which the church may modify) provided under the Welsh Church Act 1914, and are enforceable in matters of property in State courts¹²⁹. The same doctrine of consensual compact also applies to the Methodist, Baptist, and United Reformed churches: their foundational instruments are protected by separate statutes and are enforceable (at least as to property matters) in the civil courts¹³⁰.

CONCLUSION

The field covered in this very rudimentary study is enormous. The study does not focus on the historical, political, social or theological contexts in which Protestant churches in Europe have developed or operate. It offers simply a juridical perspective, and superficial at that. But that perspective is a rich one with great potential. First, examination of the internal regulatory instruments of Protestant churches indicates that it may be possible to construct a Protestant understanding of church law from the similarities between the regulatory systems of churches of different traditions¹³¹. Needless to say, there are profound differences between their juridical systems, flowing from their respective doctrinal positions on the nature of church¹³². However, an ecclesionomological approach to Protestantism suggests that it may be possible to articulate principles of law common to the Protestant churches: after all, law expresses a theological self-understanding of a church. Secondly, a comparative study of Protestant church laws may provide a resource for dialogue and mutual understanding at not only the ecumenical level but also the interfaith level: regulatory instruments of churches reveal in concrete form the inner character of an ecclesial community and its possibilities for greater visible unity as between churches and for greater collaboration with other faiths¹³³. Thirdly, exploration of the ways in which local Protestant churches, at national, regional, continental and global levels, engage in common enterprises with each other and with churches outside the Protestant tradition, raises fascinating questions about the nature of unity in diversity, the importance and limits of ecclesial autonomy, and the potential for common action in common tasks. Finally, studying the convergences and divergences between church laws, and their relationships with the civil laws of the States in which they function, stimulates a greater understanding of the concept and role of law

¹²⁸ Irish Church Act 1869.

¹²⁹ N. Doe, *The Law of the Church in Wales* (Cardiff, 2002) Ch. 1.

¹³⁰ Methodist Church Act 1976, Baptist and Congregational Trusts Act 1951, United Reformed Church Act 2000.

¹³¹ The work of John Witte, for example, goes a long way in this regard.

¹³² And of course their understandings of (eg) ministry and eucharist/communion/Lord's supper.

¹³³ In 1974 the Faith and Order Commission of the World Council of Churches adopted an Outline for the study of "The Ecumenical Movement and Church Law"; it was not pursued: see Reuver (2000), 5.

and legal pluralism. Such study may also enable States and international bodies to comprehend better the common pressures of belief and law which churches experience.

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