



## **Incarnating Authority: A Critical Account of Authority in the Church**

edited by  
Paul Avis  
Angela Berlis  
Nikolaus Knoepffler  
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Paul Avis, Angela Berlis, Nikolaus Knoepffler, Martin  
O'Malley (Hrsg.)

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# Preface – Incarnating Authority in the Christian Church

Martin O'Malley

This volume presents the scholarship of authors who met in September 2017 at the Friedrich Schiller University in Jena, Germany for a conference 'Incarnating Authority – Autorität Gestalten.' The event marked the 500<sup>th</sup> anniversary of Martin Luther's reputed posting of 95 theses on the church door in Wittenberg. The articles of this ensuing collection examine the unique significance of authority for the church in our present time.

Authority is a concept relevant to both theological and political practice, and its study reveals the deep interdependence of religious, social, and political spheres. The impact of Martin Luther's theologically-based actions upon political realities is well-trodden ground, but not the focus here. Rather, Luther's actions as authority-structuring performance is the archetype and example forming the background for critically exploring the authority concept. Uniting this volume's contributions is a focus upon authority in the church with a view to potential paths for ecumenical action.

In times of relative stability, authoritative structures (political, social, and religious) accrue ontological-like properties in the form of habituated and institutionalized social practice. This process has been described classically for religious institutions by Weber, and in legal institutions by Luhmann and others. The legal principle *stare decisis* exemplifies this semi-formal substantiating process of institutionalizing authoritative practice in common law legal systems. Along similar lines, Charles Taylor's major works have explored the constituting dynamics of narrative-in-action. Taylor uses the term 'social imaginary' rather than ideology or worldview because of the great breadth of elements that make up all we include in our complexly-identified social existences.

Once our institutional existences have achieved ontological-like solidity, authorities function according to patterns and rationalities

that can mask the underlying social nature of such artefacts. But our institutions do indeed change and theorists from philosophical, sociological, economic, and psychological fields continue to explore and expand our understanding of socially-constitutive structures and consequent authority roles based upon shared social meaning. Social change can be understood according to progressing or degenerating narratives. Axel Honneth (2014), on the one hand, uses Hegelian analysis and its recognition dynamics to characterize emancipatory movements such as campaigns for civil rights, the rights of women, and more. On the other hand, structural changes in society and church that disrupt traditional practice and understandings can be experienced as threatening, spawning slippery-slope arguments engendering resistance, reaction, or most regrettably for churches, dissociation. Though Martin Luther King Jr prophetically preached of history's arc bending towards justice, there are plenty of examples of history's arc missing a righteous mark.

This volume's contributions consider social and ecclesial structures and movements with a view to encouraging momentum towards Christian reconciliation and unity while preserving our local communities' cherished traditions. The courageous performance in 1517 Wittenberg is a lens that deserves continued attention because Luther's decidedly theologically-motivated action reveals how, in disruptive times, prophetic action can be both authority-destructive and authority-constructive.

The conference benefited from interdisciplinary scholarship while focusing on religious and theological reflection from specific religious traditions: Anglican, Old Catholic, Roman Catholic, Orthodox, Lutheran, Methodist, and Reformed. In their present contributions, scholars address similarities and differences in understanding authority within their own ecclesial communities' respective theological understandings and authority performances. The scholars were asked to focus on common ecumenical ideas, principles, strategies, and figures relevant to church and authority. For example, how might a church incorporate or actualize forms of authority in a united communion? How might this be feasible and theologically justifiable? The objective was not only to theorize about authority abstractly, but to also explore how under-

standing is achieved performatively. Thus, scholars were asked to propose action-scenarios for ecumenical advances.

The historical lens of Luther, together with comparative modern-period ecclesial/political structuring models provide insight into the interdependence of religious and secular spheres. For example, Roman Catholic papal and curial practice in the 19<sup>th</sup> century paralleled the rise of late-modern bureaucratic state practices. Centralizing authority assumed during this time was perhaps considered natural and indispensable. And centralizing ecclesial offices were institutionalized with theologically-grounded frameworks, practices, and symbols that held sway until the Second Vatican Council. Consistent with that council, the present papacy of Francis is disrupting many authority artefacts with both administrative and public actions (prophetic performance) that undermine stabilized expectations, perhaps opening opportunities for new authoritative practices. Thus, prophetic action, whether historical or contemporary, is an important element of authority disruption and creation worthy of scholarly attention. As Francis recommended during his address to the World Council of Churches in June 2018, 'Let us ask ourselves: What can we do *together*? If a particular form of service is possible, why not plan and carry it out together, and thus start to experience a more intense fraternity in the exercise of concrete charity?' Unified action can precede institutional ecclesial union.

Subsidiarity is a concept that, among others like conciliarity, stands out as especially relevant to religious and secular authority conceptions. Rooted in Christian and European traditions of exercising political, legal, and ecclesial authority, subsidiarity can be understood as a conceptual instrument containing long-tested 'localist' wisdom. While remaining subject to critical scrutiny, subsidiarity as a conceptual instrument can help form discussion and practice of exercising authority. It is generally understood in three often overlapping ways:

- a) a juridical adjudicating principle of local-law priority;
- b) a moral/aesthetic aspiration to keep things local;
- c) a principle of management to achieve a practical goal of efficiency, attractiveness, participation, or some other benefit.

Like other authority concepts, subsidiarity retains the meaning that we consciously or even unconsciously ascribe to it, but it seems a uniquely fitting concept for Christian communities to respect the uniqueness and dignity of their local communities while simultaneously understanding themselves to be united in an undivided Christian body. Christian faith is, after all, both local and universal. Faith is deeply personal and is contextualized in local church liturgical and administrative practice, even as that faith is committed to the universal truth that God created, sanctified, and unites the whole world with himself through Jesus Christ's loving life, death, and resurrection. Understanding itself to be Christ's incarnate body, ecclesial practice must be true to Christianity's personal, communal, and universal aspects.

The word subsidiarity itself is relatively recent, attaining recognition in 20<sup>th</sup>-century papal encyclicals. Nevertheless, the authority-logic it represents is far older and is found in the Roman law traditions of European common law. Though not based in specifically theological principles, Roman law and its common-law traditions were thoroughly integrated in Christian Europe for many centuries. Even the Reformers, who looked suspiciously on all thing Roman, were quick to recognize the advantages of common-law jurisprudence's local-law priority; this priority could protect church practice from secular overreach. Melanchthon saw the value of such protections after 1550 when reformed traditions had taken root but were threatened by political instabilities. He even compared the protective legal codes as analogous to written religious scripture.

The basic argument is that subsidiarity's juridical meaning (a) should be recognised more vigorously because it reflects a fundamental Christian insight. Moralistic/aesthetic (b) and practical (c) considerations are fine, but the juridical meaning emphasizes that local communities have a specific dignity with legitimate claims to protect long-practised ecclesial traditions. This is much more than a rule-of-thumb 'keep it local' suggestion. The wariness of authority is built into the Protestant perspective. And Roman Catholics theologians like Rahner also specifically argue for juridical limitations of potentially colonizing ecclesial author-

ity, even for such roles as the papal office. Rahner used a subsidiarity-authority logic to limit papal authority and check paternalistic potential.

Common contemporary subsidiarity understanding may lack this juridical dimension (a), claiming only that the most local competent governing agency should have the freedom to exercise their authority. This moralistic notion (b) lacks the righteous vigour of Roman law jurisprudence, which is providentially well-established in Roman Catholic canon law. Thus there are resources in the tradition supporting the view that keeping things local is a justice requirement that prohibits external authority from intruding upon local matters, unless the common good demands such intervention. Recognizing historical remnants in the tradition is important, but so too are the actions which embody (incarnate!) that wisdom, such as Pope Francis' willingness to recognise significant responsibilities and freedoms of local dioceses and regional bishops' conferences.

A key question is whether hierarchical structures of authority are permeable to the local responsibilities and freedoms premised by Christian faith, so that individual believers as well as the community of the faithful connected by their received faith can be more than merely deferential sons and daughters to the elders of specific churches. Subsidiarity provides a framework whereby local churches rightfully maintain their local identities and dearly-loved practices, while being unified more universally in matters of common faith. That common faith makes our church divisions a kind of heresy – a denial of our union in the Incarnate Body of Christ. Yet differences on specific questions pose significant obstacles only if the ecumenical goal is perfect agreement on all matters of faith, liturgy, and morals. Diversity can be approached in a way that does not necessarily endanger broader faith-based unities and commitments. Within a subsidiarity framework marked by toleration, humility, and mutual respect, discourse about differences can be opportunities of both challenge and growth to hear and respond to the life-giving Spirit in the Gospel Word.

Perhaps even academic conferences can be prophetic actions, insofar as such actions of common discourse, reflection, and friendship embody the goal of ecumenical union.

Finally, we express deep appreciation to the German Research Foundation (DFG) for their generous sponsoring.



# The Conciliar Tradition and the Anglican Communion

Paul Avis

This essay examines the relationship between Anglicanism and the conciliar tradition of the Christian church. Anglicanism is an expression of the Christian church that understands itself as both catholic and reformed, while being open to new knowledge from relevant non-theological disciplines, together with insights from its cultural and social context.<sup>1</sup> The doctrinal foundations of Anglicanism are biblical and conciliar. They are biblical because – crucially – nothing may be claimed as necessary to salvation without scriptural warrant (Article VI of the Thirty-nine Articles). They are conciliar because the ecumenical creeds stand in the ‘trust deeds’ of Anglican theology (Article VIII and the liturgy), and General Councils, though not regarded as inerrant, are the highest authority that Anglicanism recognises, under Scripture (Article XXI).<sup>2</sup> The polity of each Anglican church is episcopal and synodical, the bishops collectively having usually a special responsibility for doctrine, liturgy and ministry. Thus Anglican churches each recognise, affirm and practise the conciliar dimension of the church.

The particular forms that conciliarity takes in the collective life of the Anglican Communion, as a worldwide family of churches, need to be clearly understood. The Anglican Communion is a fellowship of self-governing but interdependent churches, with an interchangeable ordained ministry, practising sacramental communion (*communica-*

<sup>1</sup> The original paper behind this chapter was given at a conference on ‘Structures of Authority in the Church’ at the University of Jena, Germany, in September 2017 and in a slightly different form at the conference of the Prayer Book Society of the USA in Savannah, GA, in January 2018. A severely reduced adaptation of this chapter is forthcoming in *Theology* (January 2019).

<sup>2</sup> On the Thirty-nine Articles (1571) see Oliver O’Donovan, *On the Thirty-Nine Articles: Conversations with Tudor Christianity*, 2<sup>nd</sup> edition (London: SCM Press, 2011; 1<sup>st</sup> edition 1986).

*tio in sacris*), though with some occasional impairment. The Anglican Communion is not a global church like the Roman Catholic Church: it has no common canon law (*ius commune*), no standard liturgy and no central governing or teaching authority (*magisterium*), because each member church has its own canons, liturgy, and structures of governance. The polity is one of voluntary co-operation, persuasion and consensus-seeking – in the current jargon, ‘walking together’. Nevertheless, as will become clear, there is a significant conciliar dimension to the worldwide Communion. A particular question in this connection is whether the decennial Lambeth Conference of all Anglican bishops is a conciliar body and, if so, what sort of authority it has, given that, from its beginning in 1867, the Lambeth Conference has lacked the power to make canons. This question is pertinent to the forthcoming Lambeth Conference in 2020. My argument in this essay is that Anglicanism is intentionally an expression of reformed conciliar catholicism and that the Lambeth Conference is an example of non-hierarchical, non-coercive conciliarity.<sup>3</sup>

## A. Defining Conciliarity

Conciliarity refers to the various ways that the Christian church comes together through representative structures to take counsel within itself in order to conform its life and mission to the will of God. Conciliarity is a vital dimension of the church’s existence in the world. It is the beating heart of the church on earth. In particular, conciliarity is a key aspect of the various structures of authority that operate in the church. Conciliarity embraces all the means whereby the churches confront new mission challenges, face up to fresh theological questions, seek to arrive

<sup>3</sup> See further on Anglican ecclesiology: Paul Avis, *The Anglican Understanding of the Church*, 2<sup>nd</sup> edition (London: SPCK, 2013); id., *Anglicanism and the Christian Church: Theological Resources in Historical Perspective*, 2<sup>nd</sup> edition (London and New York: T&T Clark, 2002); id., *The Identity of Anglicanism: Essentials of Anglican Ecclesiology* (London and New York: T&T Clark, 2008); id., *The Vocation of Anglicanism* (London and New York: Bloomsbury T&T Clark, 2016).

at a common mind about their beliefs and practices and shape their policies accordingly. The goal of conciliarity is the elusive one of reaching agreement between Christians who are congenitally prone to hold opposing convictions with an intolerant passion. The remarkable truth about conciliarity is that it does indeed strive towards a distant and difficult ideal, that of consensus or general agreement. However difficult the path to agreement may be, there is no bypassing it; it is a road with no exit. By its nature and calling, the church as a body is compelled to seek the truth of God for its life and mission. The search for consensus is the intentionality that drives the conciliar process.

Conciliarity works through structures, processes, and codes. The principal means that conciliarity employs are accordingly institutional structures that are representative in one way or another, participative processes governed by rules of procedure and regulatory laws or canons. The basic principle of conciliarity is that the whole church – laity and clergy – takes responsibility for its governance. Many councils, certainly ecumenical councils, are made up of bishops exclusively. But in conciliar structures more broadly considered, such as those of the Anglican churches, clergy and laity work in harness with the bishops who, by virtue of their order and consecration, have a special responsibility for doctrine, liturgy, and ministry. The bishops bring the results of their deliberations to the clergy and laity for consultation, seeking their consent. In conciliarity, the church is understood in an organic way, as the body of Christ or the people of God. Conciliarity is thus an essentially ecclesiological concept.

In this essay, I will be focusing on the structures, processes and laws that are in view in four significant instances or episodes of conciliarity in church history. I will then consider in that light the structures of the world-wide Anglican Communion of Churches, particularly the Lambeth Conference of Anglican bishops. The four scenarios that I will look at are: (1) the early church up to and a little beyond the Council of Nicaea (AD 325); (2) the Conciliar Movement that emerged at a time of crisis in the Western Church in the late fourteenth and early fifteenth centuries; (3) the Second Vatican Council (1962–65); and (4) the Holy and Great Synod of the Orthodox Churches in 2016. The structures of

conciliarity that I am referring to are councils or synods, normally of bishops, with their administrative staff and expert advisers. The processes of conciliarity are the participative procedures that are followed in debate and decision-making, namely the shaping of a common mind, the path to consensus (if achieved) – in other words, the methods of conciliarity.<sup>4</sup> The laws that result from conciliar action are the bodies of canons, the canon law of the churches.

Studies of conciliarity do not always do justice to the role of law. Writers on the history of conciliarism or the theology of conciliarity are mainly interested in history or ecclesiology or perhaps political theory, and all of these are centrally relevant. But such writers tend not to major on the legal dimension. They either ignore the constitutional and legal aspects of councils, or perhaps take it for granted. I am deliberately flagging up the function of law in the constitution of councils. This function is twofold: first, the laws provide the legal or constitutional basis for the convocation of councils or synods; secondly, they shape the outcomes of many councils, whether these outcomes assume legislative form or are simply advisory. Although conciliarity needs a legal constitution in various forms and often eventuates in law-making, it tends not to be legalistic. As we shall see, conciliarity is often marked by a principled pragmatism and a spiritual vision that transcend the claims of law. But the fact remains that institutions cannot exist without a legal structure.

The Christian churches are institutions, with an historical, social, political, and ideological character. They are held together in part by political structures – structures of authority – and as such they require rules of governance, ecclesiastical law. A recent writer on the early councils, Christopher Stephens, claims that ‘Christianity is and was a religion of law.’<sup>5</sup> This assertion might well raise an eyebrow or two when much of Western Christendom has recently commemorated Martin Luther’s

4 See further on this aspect, Paul Avis, ‘The Elusiveness of Consensus and a Pathway to Deeper Communion’, in William Cavanaugh (ed.), *Gathered in my Name: Ecumenism and the World Church* (DePaul University, Studies in World Catholicism, Eugene, OR; Cascade, 2019).

5 Christopher W. B. Stephens, *Canon Law and Episcopal Authority: The Canons of Antioch and Sardica* (Oxford University Press, Oxford, 2015), p. 196.

central message of justification by grace through faith, in place of trying to earn salvation by meritoriously observing the works of the law. But Stephens points out, unarguably, that Christianity ‘developed out of a belief system [that of Judaism] with highly developed ideas about law, law-making and legalism.’<sup>6</sup> The church inherited a philosophy of law from the classical world, synthesising it with biblical concepts and paradigms. It learned to love law, justice, equity, and jurisprudence, not as the path to salvation, but as giving salutary form to Christian obedience in personal discipleship and the ordering of worship and ministry. So it is no surprise that the churches that looked to Martin Luther as their inspiration soon developed complex institutional structures based on sophisticated legal provisions.<sup>7</sup> Conciliarity would be hamstrung without a constitutional basis and would be of limited use unless it contributed, directly or indirectly, to forming the law of the church.

Conciliarity belongs to the very nature of the church as a permanent dimension of its existence. Structures of authority are highly diverse; churches follow different procedures and processes in arriving at policy decisions; the laws of the churches vary in their scope, detail and degree of elaboration (compare, for example, the Canons of the Church of England, which could be called ‘minimalist’ and are often permissive rather than prescriptive, with the elaborate and detailed Roman Catholic Code of Canon Law of 1983). But through all these differences the conciliar nature of the church as the body of Christ, as a people called by God and as a distinct organic society in the world, shines through. The church cannot function – in fact, cannot exist as an organic society – without conciliarity.<sup>8</sup> Hans Küng’s claim, in his book *Structures of the Church*, published in 1962 to coincide with the start of the Second Vatican Council, that the church as such is a council because it is a divinely convoked society, is a striking way of showing that conciliarity is the

<sup>6</sup> Ibid.

<sup>7</sup> See John Witte, Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002).

<sup>8</sup> *Councils and the Ecumenical Movement* (Geneva: World Council of Churches, 1968), pp. 10–11.

calling of the whole body. The Encyclical of the Holy and Great Orthodox Council of 2016 said something very similar (§ 2): ‘The Church in herself is a Council, established by Christ and guided by the Holy Spirit, in accord with the apostolic words: “It seemed good to the Holy Spirit and to us” (Acts 15.28).’<sup>9</sup>

Conciliarity is a broader and richer concept than the particular historical movement sometimes known as ‘Conciliarism’, which asserted the superiority of councils over popes in authority, though not to the exclusion of the popes. Conciliarism reunited the divided papacy in the early fifteenth century, but it over-reached itself, aspiring to control the church through regular councils, thus sidelining the pope, and it ultimately failed. Within the Roman Catholic Church Conciliarism has been under a cloud of suspicion ever since; it has been written out of the official script, consigned to oblivion.<sup>10</sup>

The distinguished historian of church councils, Norman Tanner SJ, argues that the Roman Catholic Church is injuring herself by continuing to regard the Conciliar Movement with suspicion, 700 years after certain councils (notably Constance) took matters out of the hands of the fragmented and discredited papacy in order to heal the divisions of the church.<sup>11</sup> The loss of regional councils (let the reader understand a veiled reference to emasculated episcopal conferences) and the consequent centralisation of the Roman Catholic Church) is, Tanner asserts, ‘one of the gravest wounds in Christian history’<sup>12</sup> and has contributed to the Roman Catholic Church’s weakness in facing the challenges of modernity. Ecumenical Councils are a good antidote to the typical modern Roman Catholic obsession with the papacy. However, for Tan-

9 Hans Küng, *Structures of the Church* (New York: Thomas Nelson, 1964; London: Burns & Oates, 1965), pp. 9–14. [www.holycouncil.org/-/encyclical-holy-council](http://www.holycouncil.org/-/encyclical-holy-council). ‘The Church’ here is, of course, the Orthodox Church.

10 Francis Oakley, *The Conciliar Tradition: Constitutionalism in the Catholic Church 1300–1870* (Oxford: Oxford University Press, 2003), pp. 1–19: ‘Prologue: Memory, Authority, and Oblivion’.

11 Norman Tanner, *The Church in Council: Conciliar Movements, Religious Practice and the Papacy from Nicaea to Vatican II* (London and New York: I. B. Tauris, 2011).

12 Tanner, *Church in Council*, p. 76.

ner there is hope because the Holy Spirit ‘blows where She wills’ and will stir up lay people, including women, to revive the Church.

The conciliar tradition is broader, more diffuse and less politically-motivated than ‘Conciliarism’. Examples of what Zizioulas calls ‘primitive conciliarity’ can be detected in the New Testament, particularly in 1 Corinthians, St Matthew’s Gospel and the Acts of the Apostles, chapter 15 – the so-called Council of Jerusalem.<sup>13</sup> I say ‘so-called’ because the concept of ‘The Council of Jerusalem’ as a conciliar paradigm was not employed until John Chrysostom (d. 407) and even then not immediately taken up by others.<sup>14</sup> Even the usual dating of a self-conscious conciliar tradition from the Council of Nicaea (AD 325) owes something to the retrospective action of the Council of Constantinople AD 381 in retrieving the creed of Nicaea. Conciliar theory and theology were slow to emerge and followed the event – the practice of synodality. However, the conciliar tradition continues to the present day, shaping the life of all the major churches in various ways.<sup>15</sup>

The essence of conciliarity is the whole church, in practice whole churches, coming together through representative persons for consultation, study, reflection, debate, and decision. This intense activity takes place in the setting of prayer and the celebration of the Eucharist. Following the decision, laws may be promulgated to regulate the life of the church – laws concerning doctrine, organisation, practice, and behaviour. Because these laws are norms, they are termed ‘canons’. Even where laws are not formulated, teaching and pastoral guidance is given

13 John D. Zizioulas, ‘The Development of Conciliar Structures to the Time of the First Ecumenical Council’, in *Councils and the Ecumenical Movement*, pp. 34–51 at pp. 34–9. For the development of the ecclesiological framework see John D. Zizioulas, *Eucharist, Bishop, Church: The Unity of the Church in the Divine Eucharist and the Bishop during the First Three Centuries*, trans. E. Theokritoff (2<sup>nd</sup> edition; Brookline, MA: Holy Cross Orthodox Press, 2001).

14 John A. McGuckin, *The Ascent of Christian Law: Patristic and Byzantine Formulations of a New Civilization* (Yonkers, NY: St Vladimir’s Seminary Press, 2012), p. 57.

15 See further Oakley, *Conciliar Tradition*; Tanner, *Church in Council*; Paul Valliere, *Conciliarism: A History of Decision-Making in the Church* (Cambridge: Cambridge University Press, 2012).

to the church by such gatherings. Through the teaching of the faith and its application to various circumstances, conciliar events play a vital part in the mission of the church, contributing to the exercise of the three *munera*: to teach the faith, to sanctify by the sacraments and to govern and guide the people of God. Looked at in another, but related way, conciliarity is an expression of the prophetic, priestly, and royal offices of the church and all its members, through their baptismal incorporation into the messianic (anointed) identity of Jesus Christ – *in persona christi*.<sup>16</sup>

Four key principles of conciliarity may be discerned in its diverse historical expressions. (a) Representation. How is the whole church, or a whole church, to be represented, given that it cannot physically come together in one place? Who should speak for the church? (b) Constitutionality. The scope and limits of the authority of individuals and corporate bodies are laid down, recognised and adhered to; every form of conciliarity needs a constitution, preferably a written one. (c) Consent. Those who are subject to the decisions made by authority – in this case councils or synods – must be consulted. The consent of the community to the laws that govern it is required. As the medieval adage put it, ‘What concerns all must be approved by all.’ (d) Eucharistic communion. Conciliarity is a liturgical, eucharistic reality and councils are liturgical, eucharistic events. Conciliarity is premised on eucharistic communion between the bishops who meet in council and is normally orientated to preserving or restoring the eucharistic communion of the church. Conciliarity exists for the sake of sacramental communion.<sup>17</sup>

<sup>16</sup> Vatican II, *LG* Chapter II. Paul Avis, *A Ministry Shaped by Mission* (London and New York: T&T Clark, 2005).

<sup>17</sup> *Councils and the Ecumenical Movement*, pp. 11–12 and Zizioulas in *ibid.* For a topical discussion of this principle see Paul Avis, ‘Bishops in Communion? The Unity of the Episcopate, the Unity of the Diocese and the Unity of the Church’, *Ecclesiology* 13.3 (2017), pp. 299–233.



## B. The Early Church

### The emergence of conciliarity

The practice of conciliarity emerged slowly, piecemeal, and by trial and error in the early church. In spite of the New Testament precedents, evidence of widespread consultation or regular collective decision-making in the church is lacking until the late second century.<sup>18</sup> But by the time of St Cyprian (martyred AD 258), regional councils were the norm, triggered by such challenges as Montanism and arguments over the date of Easter. Once monepiscopacy, on the model of St Ignatius of Antioch's episcopal ministry, was widely established, a conciliar regime became possible and was particularly strongly entrenched in North Africa under Cyprian.<sup>19</sup> One modern authority even refers to 'the Conciliar Movement' in the early church.<sup>20</sup>

So it is not surprising that a conciliar theology or theory had not yet been formulated. Practice and pragmatism came before theology and principle. But the nature of the church, conceived theologically as an organic body, generated conciliar activity and the needs of the church produced the first councils, albeit in an ad hoc, occasional way. Georges Florovsky wrote: 'There was no "Conciliar theory" in the Ancient Church, no elaborate "theology of the Councils", and even no fixed canonical regulations. The Councils of the Early Church ... were events, rather than an institution.'<sup>21</sup> Pointing to the councils' sense of being guided by the Holy Spirit, Florovsky insists that they were 'charismatic events'. McGuckin adds that when the bishops convened they were

18 Hamilton Hess, *Early Development of Canon Law and the Council of Sardica* (Oxford: Oxford University Press, 2002), p. 5.

19 Hess, *Early Development of Canon Law*, pp. 15–17. The Council of Carthage, held at some point between AD 220 and 230, is the first Western Council of which we have detailed knowledge.

20 Hess, *Early Development of Canon Law*, pp. 5ff.

21 Georges Florovsky, 'The Authority of the Ancient Councils and the Tradition of the Fathers', in Everett Ferguson *et al.*, *Church, Ministry and Organization in the Early Church* (New York: Garland, 1993), pp. 211–22 at p. 211. Cf. Gregory Dix, *Jurisdiction in*

expected to know, through their episcopal anointing by the Holy Spirit, the answer to the issues troubling the church, not to have to grope for it in the dark.<sup>22</sup> However, if the early councils lacked a theory, they certainly did rest on a core theology: the church was one; the apostolic faith must be upheld against deviations; the church must be ordered for edification. It followed that turbulent bishops must be curbed. To do all these things was the task of the bishops, individually and collectively, for this responsibility was given in their consecration. In carrying out such duties they would be guided by their anointing, their charism of the Holy Spirit.

Most early councils were improvisatory, thrown together urgently to meet a crisis. They were not particularly representative gatherings and they involved rather small numbers of bishops and others. They were selective in their personnel. Even when councils were designated (or designated themselves) ‘ecumenical’, the term did not have its modern meaning of ‘the whole inhabited earth’, but had a mainly qualitative, rather than quantitative sense – referring primarily to the council’s faithfulness to the apostolic faith of the church.<sup>23</sup>

### Law and Discipline

Councils had a political rationale as well as a dogmatic one. Theological education, at least in England, tends to concentrate on the dogmatic

*the Early Church, Episcopal and Papal* (London: Church Literature Association, 1975), p. 85: ‘In pre-Nicene times Councils were an occasional device, with no certain place in the scheme of Church government.’

<sup>22</sup> McGuckin, *Ascent of Christian Law*, p. 168.

<sup>23</sup> John Anastasiou, ‘What is the meaning of the word “Ecumenical” in Relation to Councils?’, in *Councils and the Ecumenical Movement*, pp. 23–33; Henry Chadwick, ‘The Origin of the title “Oecumenical Council”’, *Journal of Theological Studies*, NS XXIII.1 (1972), pp. 132–5; also in id., *History and Thought of the Early Church* (Aldershot: Ashgate [Variorum], 1982), Chapter XI; and in William G. Rusch, ed., *Henry Chadwick: Selected Writings* (Grand Rapids, MI: Eerdmans, 2017), pp. 58–62; Florovsky, ‘The Authority of the Ancient Councils’, p. 213.

function of the early councils, their definitions of doctrine. But doctrine was not the only issue that concerned them. They had a political purpose also. At Antioch in the late 330s, for example, it was discipline, order and the restraint of out-of-control bishops that was chiefly at stake. Many councils, from Nicaea onwards, produced canons (i. e. rules of discipline) that prohibited bishops from intruding into other bishops' dioceses.<sup>24</sup> The crisis in the church at this time was not simply over theology, but also over power.

Alongside the developments in doctrine that are the usual focus of attention in the study of early councils, the canons of that time witness to important developments in the institutional life of the Church, especially concerning structures of governance, conciliarity, rules and protocols, authority, hierarchy and the exercise of power. These developments were stimulated by heavyweight bishops flexing their muscles in maverick ways. Conciliar action and the issuing of canons were attempts to retrain them. The traditional narrow focus on the history of doctrine and a hagiographical approach to personalities have often obscured the machinations and motives of some church fathers. Stephens cogently argues that the three areas of theology, institutions, and major individuals should be studied together and in their interaction. Study of the early canons can shed fresh light on doctrinal and institutional conflicts.

### Diverging Western and Eastern Concepts of Church Law

Early attempts at defining what we now call 'canon law' were undermined by a state of affairs bordering on anarchy. The canons of the councils of Antioch and Serdica had a political and polemical function and included barely coded attacks on particular bishops. The canons were bids for allegiance, appeals for obedience, essays in disciplinary action. Canonical authority as we understand it today was a later, post-Constantinian development, prompted by the ambivalent relationship between the church and the state as two great interfacing institutions. Church

<sup>24</sup> Hess, *Early Development of Canon Law*, pp. 39–40.

law in the West developed piecemeal and case by case to become a comprehensive legislative system corresponding to the civil legal structure of the state and, as it were, parallel to it.<sup>25</sup>

From the beginning, Eastern canon law has inhabited a different ethos and world-view to the world-view and ethos of the canon law of the West, which developed in the shadow of the Roman legal tradition.<sup>26</sup> By contrast, the East was not particularly concerned for conceptual precision and technical sophistication in its emerging law. The development and interpretation of the Eastern canons was not subject to the oversight of a professional cadre of jurists. It certainly had a consistency and coherence of its own, but one more in the doctrinal and rhetorical than the legal and logical registers. Some Eastern councils had more the character of a Greek symposium of scholars than that of political debating chamber or court of law.<sup>27</sup> The Eastern canons grew organically, by addition, not by regulation, and the process of their reception was an informal one. Vladimir Lossky insisted that ‘The canons which regulate the life of the Church in its “earthly aspect” are inseparable from Christian dogma. They are not, properly speaking, juridical statutes, but the application of the dogmas of the Church, of her revealed tradition, to every sphere of the practical life of Christian society.’<sup>28</sup> David Wagschal

25 Adolf Harnack, *The Constitution and Law of the Church in the First Two Centuries*, trans. F. L. Pogson, ed. H. D. A. Major (New York and London: Williams and Norgate, 1910 [Crown Theological Library]), pp. 143–5.

26 See further on the Eastern canonical tradition: David Wagschal, *Law and Legality in the Greek East: The Byzantine Canonical Tradition 381–883* (Oxford: Oxford University Press, 2015); McGuckin, *Ascent of Christian Law*, esp. Chapter 7: ‘The Eastern Church’s Synodical Process’; Wilfried Hartmann and Kenneth Pennington (eds), *The History of Byzantine and Eastern Canon Law to 1500* (Washington, DC: The Catholic University of America Press, 2012). Clarence Gallagher, *Church Law and Church Order in Rome and Byzantium: A Comparative Study* (Aldershot: Ashgate Variorum, 2002) covers the 6<sup>th</sup> to the 9<sup>th</sup> centuries.

27 McGuckin, *Ascent of Christian Law*, p. 167.

28 Vladimir Lossky, *The Mystical Theology of the Eastern Church* (Cambridge: James Clarke, 1957), p. 175.

refers to early Eastern canons as 'law in the plural, as an assemblage of concrete quasi-sacral traditions.'<sup>29</sup>

### The Limited Effect of the Canons

A striking feature of the canons emanating from both East and West at this time is their limited authority. Church law was loose, flexible, and fragile. It was regarded as having moral authority, rather than as juridically binding. Cyprian wrote to Stephen of Rome, 'We are laying down no law (*legem*).'<sup>30</sup> Nicaea was the first council to expect its canons to be universally obeyed and this was due to the stiffening effect of the Emperor Constantine's close involvement. Bishops obeyed the canons only if it suited their interests. The very same bishops who had devised the canons would flout them if it served their aims. Nevertheless, conciliar canons were regarded as important: the various protagonists wanted the canons on their side as weapons in their armoury. Moreover, incompatible sets of canons existed side by side in the early church. Codification came later, though even the early attempts at collating and ordering the canons did not exclude incompatible laws. Canons did not carry the weight of authority that they later acquired and enjoy today (though there is illegality enough in most churches!). Canons in themselves are of course impotent: they need to be enforced by an authority that has the power to do so. In the fourth century there was no 'stable regulatory infrastructure' and only the Emperor could enforce church law.<sup>31</sup> The church needed the state to give force to its rules. Councils were powerless otherwise.

<sup>29</sup> Wagschal, *Law and Legality in the Greek East*, p. 279.

<sup>30</sup> Hess, *Early Development of Canon Law*, p. 33; cf. 73, 80.

<sup>31</sup> Stephens, *Canon Law and Episcopal Authority*, p. 192.