



*Liberal
theology in
a changing
world*

Who steers the ship?

The poverty of the
Draft Anglican Covenant

Paul Bagshaw

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Paul Bagshaw lives in Newcastle upon Tyne. He is a volunteer with the East Area Asylum Seekers Support Group and looks after the MCU website.

Who Steers the Ship?

The Poverty of the Draft Anglican Covenant

Introduction¹

We trained hard . . . but it seemed that every time we were beginning to form up into teams we would be reorganised. I was to learn later in life that we tend to meet any new situation by reorganising; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralisation.²

In the context of rapid change both inside and outside the Anglican Communion two questions intersect, and perhaps collide:

1. *How does the Communion weigh and determine the authenticity of developments in the expression of Christian faith?*
2. *How may divided Anglicanism cohere in a single, diverse, global communion?*

Or, put another way, *how may the church as a whole best order and equip itself for mission in a rapidly changing world?*

None of this is new. These questions, or questions very like them, are the stuff of all churches. In a turbulent world the mission of the Church is always unfinished and no answer can be perfect, final or definitive. No matter how fierce the conflict, the best possible answers are merely those that are good enough for the time being. The ever-changing world continually throws up challenges and opportunities which the Church has not previously met and to which there is never a single or uncontested response. The Church lives and thrives in dynamic engagement with the world around it.

As in all churches conflict is normal in the Anglican Communion although, at least through the last century, the equable and hospitable character of Anglicanism has largely predominated. Answers to questions of faith and order have come in the forms of personal relationships, agreed documents, the resolutions of meetings, further commissions and reflection, continued public debate and organisational change. When conflict has grown sharpest it has generally been cast in a negative form: it has been a struggle to exclude an answer or set of answers from Anglicanism (as opposed to an attempt to impose one single acceptable answer). By seeking to close down certain solutions, or by keeping possibilities open, belligerents have sought to set the tone and tenor of the Communion, to predispose Anglicanism in one direction or another.

Church conflicts may focus on a particular issue; what is always at stake is the capacity to determine the theological identity of the Church.

This paper argues that the Covenant as proposed is no answer to the present hard questions of the discernment of authentic innovation, nor to the tensions of autonomy and interdependence, nor to the challenges of mission. It argues that the Covenant is deeply misconceived and will impoverish the Communion.

The Covenant is too weak to bind the Communion together and too strong to enable development. It seeks to create an explicit and forceful bond between Communion members and thus to set contractual obligations in the place of affection willingly given. It will change the character of Anglican unity, but it will not change anyone's mind about what constitutes authentic development. Instead of peace between Anglicans it will offer mechanisms to magnify disputes and deepen division. The only prospect of unity the Covenant offers is institutionally created schism.

The Covenant will change the nature of Anglicanism by centralising power and authority, by promoting uniformity, by transforming the present Instruments of Unity into instruments of the Covenant, and by marginalising the laity. The result will be a more bureaucratic, rigid and ossified church unfit to address the mission challenges of a rapidly changing world.

The Challenge: authentic faith amidst bewildering change

A world breaking and re-forming

The *occasions* of the present conflict in the Anglican Communion were the authorisation of services for the blessing of same-sex unions in The Anglican Church in Canada in 2002, and the election and subsequent consecration of Gene Robinson, a gay man living with a partner, as Bishop of New Hampshire in 2003.

The *causes* of the present conflict are much deeper, more complex and more extensive. They lie in rapid global political, social, economic and intellectual changes which are disassembling older structures and creating new ones – including churches. Centrifugal and centripetal forces are tearing the world apart and making a new world whose future shape and character is impossible to judge. We can see the signs of the times in the storm clouds; we cannot tell what the world will be like when the storm has subsided.

Centrifugal forces include the economic dominance of the West and the aggressive dismantling of economic and political isolation, the nullification of restrictive sexual mores in the name of human rights, the celebration of individual

greed, easier physical mobility, increasing inequality of wealth, and the rhetoric of democracy contraposed to a reality of violent repression. National identity, distinctiveness and sovereignty have all been diminished as a consequence. Increasing inequalities of wealth across the world are replicated by increasing inequality within nations with resultant social stress. Intellectually, postmodern thinkers deconstruct meta-narratives (whether secular or religious). They assert the positive value of difference and diversity whilst denying that there can be any possibility of objective criteria to judge between them. ‘Things fall apart; the centre cannot hold’ (W.B. Yeats, 1920).

Yet, at the same time, everything flows together. Globalisation of the economy means that the same brands of goods may be found in almost every town across the globe. Global economic and financial institutions and more uniform standards of legal protection enable this ubiquity. Science, technology, electronic and physical communications presume a universal intellectual framework, an interchangeable physical infrastructure and, increasingly, a universal language. Although many people still suffer, these factors have enabled an ever greater understanding of the physical world, the realisation of previously undreamt human capacities, and have delivered health and wealth to many. Centripetal forces are building new patterns of community.

Not that the Church needs external causes to create division. From earliest days the Church has been divided as faithful Christians have struggled with the most appropriate ways in which to enact their discipleship – and have seen other Christians acting in ways that seem to counter or negate their chosen path. Conflict between faithful companions is endemic to the Church. It is at least arguable that the capacity to retain fundamental differences within Christianity as a whole has been one significant reason for its longevity, though the cost has been progressive schism and division.

The causes of change are *mediated* through a variety of routes. New communication technology means no-one can escape. Western firms dominate the message and, outside Asia, the means of its dissemination. Film, television and the internet push western moral values and social presuppositions into homes in every culture in the world. The internet and easier, cheaper physical communication mean that real communities of interest or shared outlook can now be built as easily, and in some ways more easily, than communities based on geography, tradition or faith.

Intellectually, universities have become global institutions with an increasingly shared ethos, standards, and personnel. The trap is circular: education is the primary route to participation in the global economy therefore global economic demands must determine the forms of education.

Reaction against globalisation is also global. Conservative and traditionalist leaders have reacted defensively, seeking to protect people against the pernicious effects of globalisation while (in many cases) themselves benefiting from it economically. Violent reaction is also a global phenomenon.

Changes in the secular world are *channelled* along pre-existing fault-lines in the Church.

The Church is inevitably and simultaneously embedded in its culture while also remaining distinct within it. What happens in the wider world powerfully shapes the Church while, at the same time, the Church draws on its own resources to offer a critique of the secular and a challenge to its values.

In the sixteenth century the Church of England embodied the fault-lines then found across Christianity. In its colonial expansion it bequeathed its tensions and divisions to the Anglican Communion. Conflict between Anglo-Catholic, Evangelical and Liberal sub-traditions have been tangible since the Oxford Movement of the 1840s and were exported around the world with nineteenth century missionary organisations. Anglo-Catholics and Evangelicals, though deeply opposed on many issues, periodically made common cause against Liberals. Liberals, in varying degrees, welcomed secular changes into the church whilst Anglo-Catholics and Evangelicals, to varying extents and with differing emphases, asserted that the priority was to judge the world by the canons of Christian faith.

Decolonisation has exposed another pre-existing fault-line in the Anglican Communion: the relationship between the British and the North American churches on the one hand and, on the other, the churches of the third world or global south. With this shift also comes a shift of ethos. The social, cultural, economic and intellectual assumptions which underpin theological, missiological and ecclesiological discussion are no longer English or American but are increasingly African and, to some degree, South Asian. To date, this shift has not been matched by a transfer of power or resources within the Anglican Communion.

The structure of ecclesiastical conflicts

In practice, while each conflict in the church has been historically distinctive, they share common structural characteristics.

First, conflict tends to be complex and extensive reflecting incommensurable differences at the level of basic presuppositions. These differences have deep historic roots and are reflected in almost every aspect of the expression and embodiment of faith.

Second, because of this complexity, the occasion of conflict is often a relatively small matter, perhaps the actions or teaching of a particular individual. Conflicts take the form of synecdoche in which small matters encapsulate and represent much greater underlying differences.

Third, whatever the occasion and focus of a conflict, the issue is always greater. A struggle about a matter of Christian belief or practice quickly becomes a struggle for the soul of the church and then, equally quickly, becomes a struggle to gain the right to determine how the church decides. Nothing is minor or *adiaphora* when the identity of the church is at stake.

Fourth, most church members do not engage in conflict. Consequently the leaders of the contending groups have to work hard to keep supporters on side and engaged in battle. They do so by increasingly strident rhetoric. They declare the conflict vital to the authenticity of the church as a whole while denying the possibility of middle ground or conciliation. The occasion of conflict becomes a shibboleth by which to divide friends from enemies amongst people who would otherwise be indistinguishable. Ever-present incommensurable aspects of Christianity are highlighted while shared discipleship and good working relationships are minimised. Thus disputes quickly become critical conflicts of self-fulfilling and self-perpetuating seriousness. On the other hand, those seeking a resolution to conflict have the majority with them although, for the most part, the majority remain silent, dispersed and disengaged.

Fifth, those seeking to resolve the crisis perceive that they cannot find a way forward by dealing with the occasion of conflict head-on. Because the issues are too great and inherently intractable they seek to move sideways and often propose organisational change. This has the immediate effect of transposing the conflict into new terms, away from its ostensible focus and onto the ultimate goal: the right and capacity to determine how the church makes decisions. Organisational change embodies shifts in ecclesial power and ‘to the victor belong the spoils of the enemy’ (W.L. Marcy, 1860).

The Covenant: gaining control of the bridge

In the midst of global political, economic and intellectual turbulence the senior officers of the Communion find themselves at loggerheads about the direction in which they should be sailing, some threatening mutiny. The Covenant purports to decide how to decide whose hand shall steer the ship.

The *Windsor Report* (2004; §§117-120 and Appendix Two) included a proposal for a Covenant:

which would make explicit and forceful the loyalty and bonds of affection which govern the relationships between the churches of the Communion. (§118)

Two further Covenants have since been officially proposed: the *Nassau* draft (January 2007; slightly amended April 2007) and the *St Andrew's* draft (February 2008). All have evoked support and criticism of principle, detail and implementation.

These proposed Covenants are primarily intended to transfer decision-making power from the Provinces to the international institutions of the Anglican Communion. They would incidentally also transfer power from the laity to the bishops. They are intended to transfer power from the British and North American churches to the

churches of the global south. However this transfer would only be secured once The Episcopal Church (USA) and The Anglican Church of Canada were expelled. They are intended to transfer power to the most conservative church leaders, to those least open to innovation, those who see least good in God's changing world.

The Covenants do not propose to deal with the occasion of conflict and offer no solution to differing evaluations of homosexuality.

All three Covenants propose to establish a constitution for the Anglican Church which would centralise governance and reduce provincial autonomy in the key areas of spiritual jurisdiction: doctrine, worship and the discipline of clergy. The *Nassau* and *St Andrew's* drafts would create juridical mechanisms to determine contested issues and would assign power of enforcement to the global structures of the Communion. The *Nassau* and *St Andrew's* drafts would subordinate the present Instruments of Unity to the single constitutional framework, reflected in a change of terminology from the *Windsor Report's* 'Instruments of Unity' to 'Instruments of Communion'.

Significantly each draft has based the efficacy of the Covenant on a different idea. The *Windsor Report* relied on common canon law and an Anglican Communion Officer based in each Province; the *Nassau* draft proposed the common mind of the church as the criterion by which to test membership of the Communion; the *St Andrew's* draft rests on adjudication of threats to the unity and mission of the Communion. This suggests that the goal, the power to expel a member from the Communion, is more important than the principle on which the power is based.

The whole Communion undertakes its mission in the midst of centripetal and centrifugal forces which are reshaping global society and the Church with it. When everything is dark, unpredictable and uncertain, the desire for safety and assurance is entirely understandable. When church leaders are frustrated because they have no power to discipline the North American churches it is reasonable that they look for ways to acquire that power.

The *Nassau* and *St Andrew's* drafts meet both objectives. Both attempt to change the Communion from a small flotilla of boats, each under its own captain, to a single, larger ship which an Admiral may command from one united bridge. Both offer ways to curtail the diversity of Anglican practice and to narrow the range of its mission. Yet the winds which trouble the church will not stop because of organisational change and the deep differences inherent in the church will not be ameliorated by more centralised mechanisms. The mission of the church will still be as varied and as novel as the circumstances in which the church is present.

The *St Andrew's* draft

An Anglican Constitution: power to the centre

For the Anglican Communion to become a ship with a unified command and a single direction its senior officers must first gain control of all its parts.

In place of the present uneven and constitutionally messy web of relationships between Provinces the Covenant would become the controlling document to which all other structures of relationship would be subordinate. The terms of the constitution are set out in the *St Andrew's* draft on a clear pattern of statements of affirmation followed by consequent commitments. The authors have done the Communion good service in articulating the shared inheritance of faith, the life and mission of communion in a succinct and clear fashion.

If the enforcement mechanisms of the *St Andrew's* draft (§3.2.5) are removed it may be possible for all present members of the Communion to sign the Covenant and to do so with goodwill, fully committed to abiding by it.

Yet even without powers of enforcement a Covenant would change the Anglican Communion. The Covenant would remain a voluntary agreement freely entered into by autonomous bodies but 'bonds of affection' would be replaced by bonds of written agreement. Anglicans would no longer comprise those in communion with the See of Canterbury but would become those who were signatories to the Covenant. The Covenant would become a confessional statement requiring progressively more extensive interpretation of its terms as new issues arose.

Even without enforcement powers the Covenant would become the focus of future disagreements. Contending groups would see the possibility of altering the Covenant as an effective means to change the culture or priorities of the Communion and also as a potent symbol of shifts of power. Once signed, the Covenant's internal momentum would almost certainly drive it towards becoming an enforceable contract of association.

But in fact the power of enforcement is critical to the Covenant. Without it the transfer of power from the north to the south would not happen. Without it many conservatives would conclude that the Communion actively refuses to assert orthodoxy over perceived heterodoxy.

Centralisation and conformity

An intention and consequence of the Covenant is the transfer of power from the Provinces to the central organisations of the Communion. The key power, before expulsion, is the capacity to delay, restrict and prevent change.

Centralisation will occur in a variety of ways. It will happen quietly through bureaucratic processes as officers of the Instruments of Unity gather information and make arrangements to run the mechanisms envisaged in the *St Andrew's* draft.

It will happen as Provinces, anxious not to be the subject of a complaint, informally consult the central Instruments of Unity. Multilateral channels will no doubt remain, but will be less used for the more important communications.

Centralisation will come about because the majority of future debates, and maybe all of them, will not conform exactly to the presumptions on which the Covenant has been drafted. Therefore the central organs of Anglicanism will amend the rules to encompass each new issue they face. (They are given the power to do in the *St Andrew's Appendix* §1.5.) Each change will gather a little more power to the centre. In all organisations, once power is taken to the centre it is almost never returned to the periphery; once a question is determined at the centre it cannot subsequently be decided locally.

There is nothing in the *St Andrew's* draft Covenant to prevent or balance this centralisation of power. There is no discussion of subsidiarity³. No principles have been adduced by which to evaluate the proper allocation of power within the Communion. There is no accountability to member Provinces for actions taken under the rules of the Covenant. There is no means of amending the Covenant (a significant weakness in a constitution). The frequent assertion in the draft Covenant that Provinces are autonomous is simply denied by the proposed transfer of power to the global Instruments of Unity entailed in §3.2.5.

Conformity

Greater *conformity* between Provinces is also built into the Covenant.

Each draft Covenant implicitly assumes that all signatories are equal under the Covenant. Yet in practice Provinces differ from one another in almost every imaginable aspect. The number of their members varies widely. They differ in their dominant theological tradition, their wealth, organisational strength and self-confidence, in the place accorded to the laity and their culture of ecclesial authority. Different Provinces have different relationships with their nation states (so, for example, a more close knit Communion may aid the Episcopal Church of Sudan and cause considerable difficulties to the Hong Kong Sheng Kung Hui). Provinces differ in their dominant language and the number of languages used. There are wide variations in worshippers' vulnerability to persecution, their educational expectations, ease of communication and travel, and in much else. Their differences mean each Province experiences the centripetal and centrifugal forces of globalisation in different ways. What is a priority in one place may be irrelevant elsewhere. What fosters mission in one place may detract from it in another.

In relation to the Covenant proposals this inequality may be expressed in a variety of ways. Smaller, more focused and more coherent Provinces may find it relatively easy to instigate action against another under the arrangements set out in the *Appendix* to the *St Andrew's* draft. Provinces with more complex or more inclusive decision-making processes may find it more difficult. Weak and divided Provinces may find it impossible. Stronger Provinces may be able to exercise more political

influence at various stages of the process or, causing equal resentment, may be perceived to have such influence.

Once the mechanisms of the Covenant creak into gear the Provinces' differential features will create inequities and misunderstandings. The bureaucratic solution will not be to accommodate the centre to the Provinces but to seek to make the Provinces more like one another.

The first place the Covenant will impinge upon will be the internal constitutional relationships between the constituent bodies of a Province. In the *St Andrew's Draft*, signatories would commit themselves

to act with diligence, care and caution in respect to actions, either proposed or enacted, at a provincial or local level, which, in its own view or the expressed view of any Province or in the view of any one of the Instruments of Communion, are deemed to threaten the unity of the Communion and the effectiveness or credibility of its mission . . . (§3.2.5, emphasis added)

This clause would make a provincial governing body responsible for the actions of dioceses or national churches which make up that Province. Yet some provincial constitutions accord considerable autonomy to their constituent bodies. It is far from inconceivable that a Province will find itself held responsible for matters over which it has had no control and against which its central organs may have protested. Such constitutions would soon become intolerable to other Provinces and the Instruments of Unity will find themselves recommending changes, strongly.

Inevitably, if the Covenant is implemented, the global Instruments of Unity, and their permanent staff in particular, will be drawn in the direction of policing the Communion. The *St Andrew's* draft envisages that the Archbishop of Canterbury is consulted as to the advisability of certain courses of action even in the absence of a complaint. His officers, because they have an understanding of what is happening in the various parts of the Communion, will find themselves issuing informal warnings about the potential of a course of action to lead to intervention, if only out of institutional anxiety and self-protection. The capacity to instigate action against a Province (*Appendix* §2.1) where there is a perceived threat to unity and mission will quickly shade into a duty to act pre-emptively if a matter might be a possible cause of concern.

Even if no formal complaint is ever made the possibility of action will have a chilling effect on innovation in the Communion. Provincial and local church authorities will be more cautious, self-censorship will be normal, and individuals or groups who venture into uncertain territory will find themselves disavowed more quickly. The fire of faith will find itself dampened down and enthusiasm will be constrained by ecclesiastical health and safety instructions.

There is no counter-weight to these institutional processes of constraint and control in the draft Covenant. Nothing in it is designed to facilitate the fresh expression of faith in each generation and place, nor to articulate the Gospel in terms appropriate to new situations or modes of thought. Conservative attitudes to the expression of faith

are proper and necessary but the consequence can only be ossification and decay unless there is also the capacity for renewal and restatement.

There is one important caveat. The Anglican Communion is too big and its central structures too small and ill-funded for these changes to be rapid. Nonetheless pressure towards increased centralisation, greater conformity, institutional anxiety and potentially intrusive scrutiny is built into the Covenant as presently drafted.

Juridical dispute resolution

In substance, though not in name, both the Nassau and the St Andrew's drafts propose an international ecclesiastical court for the resolution of disputes. Those who control the court govern the whole ship.

The gravest power that these draft Covenants have accorded themselves is the power to exclude a member from the Anglican Communion. This proposal, novel to Anglicanism, was first propounded in *To Mend the Net: Anglican Faith and Order for Renewed Mission* by Drexel Gomez and Maurice Sinclair (2000). Under Archbishop Gomez's chairmanship the power to exclude has been a central element in the deliberations of the Covenant Design Group. It would give the Covenant teeth, be a symbol of Anglican virility on the stage of the world's Christian churches, and would deliver the means to expel TEC and The Anglican Church of Canada from the Anglican fellowship.

Even if never used the presence of this power and the consequent changes in the structures of the Anglican Communion will change the ethos of Anglicanism. However, it is highly likely that, once in place, the disciplinary mechanisms will be evoked and, once begun, there is always the possibility that an action will eventuate in the expulsion of a Province.

The lessons of history

Historical experience strongly suggests that ecclesiastical courts simply do not work. In nineteenth century England a large number of cases were launched on liturgical grounds and a handful on doctrinal grounds. Three doctrinal cases led to the expulsion of eccentric individuals from the Church of England; five clergy were imprisoned for continuing to use liturgical practices the courts had declared illegal. To that extent the courts showed that they had teeth and would use them.

But the courts did not work because they were being used as weapons in the struggle for the soul of the church. The courts were asked to make definitive judgements which would prevent change in the church or would declare certain doctrines or practices unacceptable. It was this larger, critical, policy dimension of court action that failed.

They did not work because court cases were gambles. In effect the promoter of a case bet that the court would side with them and would rule, definitively and forcefully, that a particular doctrine or practice was intolerable within the broad

spectrum of the Church of England. But the courts were unpredictable. The promoter who lost a case found that they had lost a lot more: what they had wanted expunged from the church was sometimes ruled to be legal. As a tool of policy legal action could be wholly counterproductive.

Cases were brought to court as synecdoches, encapsulating much greater issues, in the hope that judgement would both effect and symbolise the ascendancy of one sub-tradition within the Church of England and the occlusion of another. But the courts dealt in the law, not literary forms, and all that was decided was the detail of that particular case. It proved almost impossible to establish broader precedent and (particularly in the area of liturgy) one case merely led to others.

Court cases did not work because faith is not subordinate to legal rulings. To determine a symbolic case does not determine the substance of the conflict. No-one changed their opinion on the basis of a court judgement. Win or lose, promoters did not cede to the courts authority over own opinion. On the contrary, when a case was lost, promoters blamed the court for coming to the wrong opinion.

Cases did not work because they were attempts to draw lines in the sand. Time and tide erased the lines: practices and beliefs which once caused scandalous division later vanished from sight or became accepted as normal. It is impossible to comprehend the intensity of yesterday's fire by picking over the charred historical remains. Occasionally, later, a promoter would acknowledge their regret at taking the case in the first place.

Finally, whatever the outcome of the case, many of the individuals involved, including some of the promoters, were personally scarred by the experience. Public opinion was scandalised by the sight of Christians taking one another to court to determine not whether they believed but the way in which they believed. Battle-lines within the church grew more deeply entrenched and the great majority who were not personally engaged in the conflict were embarrassed and, at times, their adherence weakened.

It is entirely predictable that an international court for the adjudication of Anglican theology and practice would share all these weakness and on a much bigger scale.

The St Andrew's proposals

The *St Andrew's* draft is more subtle than its predecessor. The *Nassau* draft proposed that the Primates' Meeting would make a positive affirmation of Anglican orthodoxy, 'the common mind' of the Church §6(3), and then adjudge whether a Province adhered to that orthodoxy. The concentration of global juridical power in a group of 38 people and the idea of a 'common mind' in the context of significant conflict were strongly criticised.

The *St Andrew's* draft distributes responsibility for its juridical-bureaucratic processes across all the existing Instruments of Unity. Instead of seeking to determine the core of belief and practice it seeks to determine the boundary of what is acceptable

in the case at issue. It proposes one ground for complaint: that a church has acted, or intends to act, in ways which are

deemed to threaten the unity of the Communion and the effectiveness or credibility of its mission. (§3.2.5)

It then describes bureaucratic-juridical mechanisms to determine whether the perceived threat is real (*Appendix*). On the basis of that determination the ACC would then decide whether a Province had stepped beyond the tolerable limits of membership of the Communion as defined by the terms of the Covenant.

In fact the difference between the *Nassau* draft and the *St Andrew's* draft is more apparent than real. The idea of the 'common mind' of the church remains in the *St Andrew's* draft and signatories commit themselves to seek it (§§3.1.2; 3.2.4). The Primates' Meeting retains considerable powers of determination, though no longer exclusively.

The key difference between whether the core or the boundary of Anglicanism should be the test of continued membership of the Communion is also more apparent than real. Any determination that a Province's actions 'threaten the unity of the Communion and the effectiveness or credibility of its mission' would have to state the grounds on which the decision was based. This would include a detailed delineation of the boundary which no Anglican Province could properly cross. The nineteenth century English ecclesiastical courts made comparable judgements and found, to their considerable irritation, that this distinction was too subtle for most commentators (and some lawyers). Their judgements were consistently read as determining aspects of the positive teaching of the Church of England no matter how strongly they protested that this was neither their intention or their role. A statement of the boundary of Anglican unity would inevitably be read as a statement of the 'common mind' of the Church.

The mechanisms for conflict resolution proposed in the *Appendix* to the *St Andrew's* draft are more complex and more nuanced than that of the *Nassau* draft. They begin with informal conversation and formal consultation. The routes then available are either a formal Request from the Archbishop of Canterbury (Route 1), or deliberation by another Instrument of Unity – in practice the Primates' Meeting⁴ (Route 2), or theological examination by a Commission specially appointed by the Archbishop of Canterbury (Route 3), or mediation (Route 4).

Most of these elements are unexceptional in ecclesiastical court structures. Conversation, consultation and mediation are necessary in a community of autonomous Provinces.

Nonetheless the whole process is deeply flawed. It is fundamentally tainted by the capacity of the Archbishop of Canterbury and the Primates' Meeting to issue instructions to Provinces (a 'Request' with sanctions for non-compliance is an instruction whatever its title). It is tainted by the final power to expel a Province. Force, or the threat of force, is the tool of power politics. It is wholly inappropriate to the search for God's truth, for the discernment of faithful discipleship in the midst of global turmoil, or as a response to forms of mission which are novel and potentially disturbing.

In practice it is this final power of expulsion which will determine all the steps which lead up to it.

A central difficulty is the tiny number of people who comprise the international structures of the Anglican Communion, almost all of whom will be, or be perceived to be, partisan. Inevitably church leaders will have been involved during their careers in areas of contention in their writing, in pastoral judgements, or as belligerents in earlier ecclesiastical conflicts. Almost by definition there is no-one with the necessary knowledge and judgement to assess complex issues of theology, mission and church order who has not previously made pronouncements on the matter. A basic tenet of natural justice, the impartiality of judges, can hardly be met.

This small pool of church leaders also determines the concentration of power which would be enacted by the Covenant. The *Nassau* draft was criticised for concentrating power in the Primates' Meeting. The *St Andrew's* draft provides only a small disguise to mask the same concentration of power. Following the failure of informal conversations the draft grants the Archbishop of Canterbury extensive powers to control the early stages of potential dispute. He is involved, formally or in person, in every step of the process (in his own right as an Instrument of Unity, as a member of the Joint Standing Committee of the Anglican Consultative Council and the Primates, as head of the Primates' Meeting, as convenor of the Lambeth Conference, and as President of the Anglican Consultative Council and ex-officio member of all its committees). His role is replete with conflicts of interest.

In Route 2, with little practical difference from the *Nassau* draft, the Primates are given powers to determine whether an issue is threatening the mission and unity of the Communion. If so they may issue instruction and send the matter to the ACC for final deliberation.

The *St Andrew's* draft does not disperse power, it doubles the locations where power is concentrated.

Fundamental conceptual errors

In the context of a potentially divisive dispute the disciplinary processes of the *St Andrew's Appendix* presume an accuser and a defendant. This is a basic conceptual error. A threat to unity requires two parties: a church which acts, or considers acting, in a novel manner in mission, liturgy or church order, and a church which is sufficiently offended to judge that it probably cannot remain in communion with the innovating church. Both action and reaction are necessary to create a divide. There may be a general presumption against innovation (despite the recognition of the beneficent effects of what were once innovations §3.2.3), but there can be no presumption that just one side is causing the threatened division. Yet the *St Andrew's* draft is unevenly directed at the innovating church: it alone bears the onus of proof, it alone is made vulnerable to instruction, and it alone risks expulsion.

The presumption that all members are equal, though they are not, will create procedural anomalies. The capacity to instigate proceedings lies with Provinces and

Instruments of Unity (except the ACC) (§2.1, 2.2). However this is likely to generate almost as many different processes in the preparation for, and instigation of, proceedings as there are Provinces and Instruments. The motivation to act is likely to be strongest in those Provinces whose ethos is relatively conservative, which are most coherent in their ethos (and thus do not have anxieties about internal disagreement), which have the simplest internal decision making mechanisms, and which are the most touchy about other people's behaviour. The alternative is a further reduction of provincial autonomy by the internalisation of common mechanisms – and existing differences between Provinces may well make it almost impossible to agree a single mechanism.

Also implicit in the formulation of the process is the presumption that only innovation on essential matters will be divisive. Secondary matters, *adiaphora*, will no doubt engender debate and differences of opinion but will not be such as to divide the Communion. Yet this distinction is illusory and repeated reports have struggled with its complexities (*Windsor Report* §§37; 87-96). Historically conflicts and division have been occasioned by, for example, the use of icons, the introduction of an organ into a church, or the interpretation of the Old Testament. The courts of the Anglican Church of Canada determined that same-sex blessing were a matter of doctrine, but not of core doctrine and, therefore, should not be a cause of division. The deliberations of the court had no measurable impact on the course of dispute and the blessing of same-sex unions remains an occasion of division. In practice what is divisive is defined by those who are affronted, not by the actions of the innovating church nor by any objective criteria.

The reinvention of Anglican unity

Nor is unity a single cloth or static concept. The Anglican Communion has struggled with the quality of its unity since its inception. Reflecting on the complex and uneven degrees of communion and disunity the Lambeth Commission observed:

there has been little consensus within the Anglican Communion on how precisely to identify, beyond a bare assertion, that such impairment, fracturing, and so forth, has taken place, let alone how such a situation might be remedied. (*Windsor Report* §50)

The proposed Covenant would cut straight through the uncertainty. Adoption of the Covenant will create a new definition of Anglican unity: signatories to the Covenant will be in unity with one another by that fact, irrespective of other differences between them. It may be ecclesologically desirable to reduce the understanding of unity to a single concept. It may equally be that ambiguity and differing levels of mutual recognition have been vital threads through all that has tied the diverse churches of the Communion together. The clearer, simpler, less ambiguous and more rigid the test of unity the easier it will be to break that unity either voluntarily or by forced expulsion.

The single most glaring misconception of the draft Covenants is the self-contradictory notion that unity can be achieved by dividing the body. The image of cancer has been invoked: that, to save a life, surgery may sometimes be necessary. Yet surgery does not cure cancer; it can merely buy time and relapses are always possible.

Furthermore the pivotal phrase of the *St Andrew's* draft, the accusation that a church may be 'deemed to threaten the unity of *the* Communion and the effectiveness or credibility of *its* mission' (§3.2.5, emphasis added), would seem to imply that the Communion has one single mission not only in theological definition but also in its embodiment.

In fact the expression of mission is highly varied and necessarily specific to its context. Mission in Kano, Singapore, Sydney, Sao Paulo, San Francisco and Glasgow, are unlikely to be conducted in the same manner, on exactly the same presuppositions, with the same priorities, or using the same words. What threatens the effectiveness or credibility of mission in one place may be conducive to mission in another. Again the Covenant presumes a uniformity which is not present in reality.

The tight timescales envisaged in the *St Andrew's Appendix* give the air of a sharp, professional conflict resolution mechanism. It ignores the fact that the most divisive issues refuse to be contained in such artificial boxes. Dispute over the ordination of women, for example, has continued since at least the 1930s and remains unresolved.

Mediation (Route 4) fits somewhat uneasily into the disciplinary processes. Mediation may be important to restore amity and good working relationships and parties may still feel aggrieved if a complaint has been dismissed. However it is quite inappropriate to deem that a church which refuses to enter mediation is thereby guilty of threatening the unity and mission of the Church, given that mediation is only anticipated (in the *St Andrew's* mechanisms) once it has been determined that there is no threat to unity and mission. Enforced mediation, or mediation on pain of expulsion, cannot be expected to work. It is more likely to lead to a search for the minimum action necessary to assuage bruised consciences than to the restoration of fraternal relations.

Final adjudication

At the conclusion of the process there is a deliberate disjunction between what has gone before and the final role of the ACC (*Appendix* §8). The Archbishop of Canterbury (Route 1) or the Primates' Meeting (Routes 2 & 3) will have determined whether an offending church has threatened 'the unity of the Communion and the effectiveness or credibility of its mission'. Similarly, if a church had refused to enter into mediation (Route 4) it would automatically be regarded as having threatened the unity and mission of the Communion. In each case the file would be passed to the ACC to decide whether or not a church had acted in ways that were incompatible with the Covenant (*Appendix* §8.2). The ACC is not a Court of Appeal: it cannot re-hear the issues or determine whether due process has been followed.

However the ACC (which includes the Archbishop of Canterbury and the Standing Committee of the Primates' Meeting) would seem to have little or no room for manoeuvre. Should an offending church refuse to act in conformity with the instruction of the Archbishop of Canterbury or the Primates' Meeting (or, just possibly, the Lambeth Conference) it would thereby be guilty of breaching the Covenant commitments set out, for example, in §§1.2.3; 1.2.6; and 3.2.1. In practice the Archbishop of Canterbury or the Primates would draw up the warrant for execution and the ACC could do little more than sign it.

To leave the writing of procedural rules to each Instrument of Unity (*Appendix §1.5*) avoids addressing publicly a critical issue about the judgement to expel a province. *How will the ACC decide to expel a member Church?* Will it be by a simple majority of those present and voting? Or by a two-thirds majority? Or a majority of its whole membership, present or not? Will those party to earlier stages of the dispute, or to concurrent and related disputes, be eligible to vote? Will the vote be secret? As the ACC is asking a different question from what went before, will the parties be allowed to make new representations? To leave the details of each stage of the disciplinary process to be decided out of public view is to give the Instruments of Unity very considerable power. Details are key to any juridical or conflict resolution process.

Once judgement is made there is no opportunity for review or appeal. There seems to be no recourse for a complaining church whose complaint is dismissed, nor if it is dissatisfied with a judgement of the Archbishop of Canterbury, nor if the Commission of Enquiry comes to conclusions it cannot accept. There is no appeal on the grounds that due process has not been followed, nor that the rules of natural justice have been breached. If these procedural weaknesses are not redressed the consequence will be resentment in churches which complained and the churches complained against.

Both the *Nassau* and the *St Andrew's* drafts envisage that, once a church has been expelled negotiations should begin to re-admit them. It is hard to see this as more than a fig leaf. An expelled church is more likely to harden its stance than to experience a sudden conversion to the majority view of the Communion.

The absent laity

The laity (and, for that matter, any clergy other than bishops) are almost completely absent from the draft Covenant. Lay people appear, formally and solely, in the constitution of the ACC.

This may well reflect a pragmatic judgement of the nature of global politics in the Church. However it also seems to express an ecclesiological principle that the Church is comprised of its bishops and formed through those structures where bishops meet. This is a radical innovation in Anglicanism. The Book of Common Prayer describes the Church as 'the blessed company of all faithful people' and the synodical half of the bishop-in-synod has generally been interpreted as including both clergy and laity.

To reduce the power of the Provinces is also to diminish the role that lay people play in the government of the Church. Yet lay people will ultimately be expected to pay for the expansion of the international Instruments of Unity that the draft Covenant envisages.

Along with the absence of subsidiarity and accountability, any idea of the reception of doctrine is also missing from the draft Covenants. The processes set out in the *Appendix* of the *St Andrew's* draft are governed by archiepiscopal structures and the timetable contains no room for broader deliberation or reception of innovation. To determine contested issues by juridical processes is to exclude the wider views of members of the Church.

The gap between lay members and ecclesiastical decision making will grow wider. A predictable, if unintended, consequence will be that juridical decisions will decide matters globally and determine nothing in worshipping communities, just as the Roman Catholic Church has found with birth control. The Spirit will not be constrained by global decision making.

Predictable, but unintended

The disciplinary processes envisaged in the draft Covenants are likely to have several predictable but unintended consequences. The possibility of a complaint (even if none is ever made) will create additional work for the staff of the Archbishop of Canterbury, as informal enquiries are made. There will be a need for additional staff, more travel, and bigger budgets.

The inequity in the Covenant between the innovating and the offended churches is likely to lead to the submission of counter-complaints. Few disputes are likely to be restricted to two Provinces alone and the opportunities for international ecclesiastical power-play will be multiplied. Provinces will line up with one another as joint complainants and defendants, or a number of cross-cutting complaints may be launched simultaneously. If there is more than one complaint at a time the tight deadlines envisaged in the *St Andrew's* draft will put severe strain on the Instruments of Unity and their officers. Again additional funding will need to be identified. The *St Andrew's* draft is audibly silent about the cost of its proposals and who would pay.

If enquiry and adjudication are public, and even more if they are not, they will attract considerable media interest. Debate will be amplified by internet chatter and, if nineteenth century experience is anything to go by, most public comment will be ill-informed, partisan, and simplistic. Complex issues will be reduced to personalities or sound-bites. Together, the fact of the dispute, procedural weakness, perceived political influence and media debate will combine to be itself a threat to the effectiveness or credibility of the Communion's mission.

Finally, far from concluding debate, dispute is likely to be heightened. The tensions between Provinces run within Provinces as well. No-one will change their views as a result of these global processes. The church which 'loses' will feel aggrieved and see no reason to accept the innovation it objected to, nor will one church

halt their proposed innovation for ever because another church objects. A process that has run its course and come to an organisational conclusion, but which leaves the issue still festering, will satisfy no-one. It will make subsequent attempts to resolve the matter much more difficult.

Conclusion

The Anglican Communion is neither a ship nor a flotilla. It is better envisaged as a complex living entity, growing, flowering, dormant and dying in the different soils in which it is set. Planted and fed by God, the Church lives, thrives and withers within the turbulent ecology of political, economic, intellectual and cultural change. As a living entity the Anglican Communion requires structures which will facilitate mission and evoke holiness in a wide range of ever-changing contexts. It does not need a rigid and ossifying constitution.

The *St Andrew's* draft Covenant would establish a single international jurisdiction superior to the present structure of autonomous and inter-linked provincial legislatures. It dictates that questions of authentic development and the coherence of the Anglican Communion should be determined by juridical-bureaucratic structures. The text of the Covenant would become the sole basis of adjudication of authentic development. To be a signatory to the Covenant would become the sole test of membership.

The draft Covenant will not deal with the substantive issue of whether people who are homosexual should have full standing as members of the Church. Instead it would transfer power to those who are offended by the stand that TEC and the Anglican Church of Canada have taken on the question. The expulsion of both churches would retrospectively legitimate the intrusions of other Provinces into their jurisdictions. Their expulsion, and the pervasive threat of further disciplinary action, would predispose the theological and cultural ethos of the Anglican Communion in conservative directions for generations to come. The draft Covenant offers nothing to balance this trend: it lacks any notion of subsidiarity, accountability or the reception of innovation by the whole Church. Decision-making power would steadily leach from across the Communion into larger, more rigid, more powerful and ever more expensive global institutions.

None of this will equip the Church for mission. On the contrary, the *St Andrew's* draft Covenant offers a structure with brakes and no engine. Its proposed conflict resolution mechanisms would provide the means to amplify local disputes into global conflicts. The unity it offers is based on the threat of division. The presumption of uniformity will create new strains between and within member Provinces. New structures will lead to a generation of institutional introspection. Archiepiscopal control will be strengthened while the laity will be further marginalised. To hand

power to those whose instinct is to resist change would militate against developing flexibility and the imaginative steps necessary to enable the Church to respond to the centrifugal and centripetal forces which are re-making human society across the globe.

The *St Andrew's* draft Covenant primarily reflects institutional insecurity and a lack of confidence amongst the Communion's leadership. To adopt it would preclude more nuanced ways by which Anglican Provinces might realise their distinctive and shared identity, each following their own course, faithfully and interdependently. Implementation would discard much of Anglicanism's conciliar tradition which holds the potential of more supple and subtle ways to address questions of Anglican coherence and authentic expressions of faith. The Anglican Communion will be the poorer if it adopts this Covenant.

There is no end to conflict, no means of knowing what the future holds, only the assurance of unanticipated challenges to come. God has poured blessings on the Anglican Communion in generous measure, packed down and running over. A Church structured in such a way that no group or individual can finally capture the right and capacity to determine how it makes decisions is a Church capable of holding within it almost all the major strands of Christianity. Instead of being a weakness this wide embrace may prove to be a providential strength in uncertain times.

There are no solutions, no definitive answers, to questions of faithful discipleship. Answers are made in our practice: they lie in the ceaseless unfinished pursuance of God's work, undertaken in fear and trembling by all faithful people, in their rich variety, struggling to discover ways forward in disagreement and together. The best possible answers to questions of faith and order are those which enable the living Church to flourish, for the time being, in all its glorious God-given diversity.

The Covenant will not do.

Notes

¹Official papers relating to the *Windsor Report* and processes which followed the Report, including the Covenant, can be found at <http://www.aco.org/commission/>.

²Origin unknown. Though modern it has been conventionally and erroneously attributed to the Roman General Petronius (c. 60 BC).

³Notwithstanding its significance in the *Windsor Report* (§§38, 94, 95) and *The Virginia Report* Chapter 4 and Final Reflections (1998).

⁴The ACC is ruled out because of its role as final arbiter, and the infrequency of the Lambeth Conference effectively excludes it in the great majority of circumstances.

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The Poverty of the Draft Anglican Covenant

Paul Bagshaw

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