

## THE RECEPTION, RECOGNITION AND RECONCILIATION OF HOLY ORDERS

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*Questions of the mutual recognition, or not, of the ministry of different Churches have been high on the ecumenical agenda for many years. Roman Catholic sacramental theology, manifest inter alia in Canon Law, has a clear understanding of the validity or invalidity of sacraments, including holy orders. Validity is a strong word and implies that sacramental acts which are not valid are de facto ineffective. The language of validity is often informally used in debates about the recognition and reconciliation of Anglican orders with those of other Churches although it is argued here that there is no such clear doctrine of the sacramental validity or otherwise of ordination in Anglicanism. Anglican Churches, including the Church of England, have, over time, developed their doctrine and practice of conferring holy orders, of recognising holy orders conferred in other Churches and of reconciling Anglican and other ministries. These are examined below and followed by a selection of case studies on ecumenical relationships between Anglican and Roman Catholic, Methodist, Old Catholic, Reformed and Lutheran Churches during the nineteenth and twentieth centuries. The examination and case studies show that whilst the Church of England does not have a doctrine of the validity or otherwise of holy orders it does have a developed doctrine of what constitutes lawful ordination and systems for ascertaining whether or not the orders of other Churches can be recognised as being interchangeable with its own.<sup>1</sup>*

It is clear from any examination of recent (and not so recent) ecumenical dialogue, particularly that involving Anglicans, that questions involving ordination and the recognition of orders conferred in different Churches have been elevated to a position of extreme importance. For instance, differences in the understanding and mutual recognition of ministry keeps the Church of England and the Protestant Churches of Germany from a relationship of full communion<sup>2</sup> and qualms about the method by which ministries might be reconciled caused the General Synod of the Church of England to fail to approve the Anglican-Methodist Unity Scheme of 1968-72.

There is a widely-held belief, borne out in the reading of modern books

<sup>1</sup> This is an abridgement of a dissertation of the same title submitted as part of the LLM in Canon Law at Cardiff University in 2003. The full version contains more detailed assessment of orders and ordination in the Roman Catholic and Methodist Churches.

<sup>2</sup> For a discussion of the Meissen Declaration, see below.

on Canon Law<sup>3</sup> and in anecdotal evidence<sup>4</sup>, that it is possible to identify a doctrine of valid ordination within the official doctrine and sacramental theology of the Anglican Communion. However, whilst the concept of the validity of holy orders is key in understanding the debate, it is misguided to use it when talking about an Anglican understanding of the reception, recognition or reconciliation of holy orders.

## ORDINATION AND SACRAMENTAL VALIDITY

Ordination, or setting apart for a particular ministry in the Church by prayer with laying on of hands, has its roots in the New Testament. Order was defined as one of the seven sacraments of the Church<sup>5</sup> and, both before and after the Reformation the Roman Catholic Church has held a clearly defined and developed doctrine of validity in relation to the celebration of the sacraments. This doctrine, according to Gurrieri, has its roots in the Council of Chalcedon;<sup>6</sup> validity touches on the unchangeable core of the sacrament<sup>7</sup> and is distinct from mere liceity, or lawfulness which does not affect the authenticity of the sacrament.<sup>8</sup> Therefore in Roman Catholic understanding the sacrament of order has to be administered validly to have any effect. Validity is ensured by the presence of valid matter, form and intention. The matter is laying on of hands by a bishop<sup>9</sup> with prayer (this was prescribed by Popes Pius XII<sup>10</sup> and Paul VI<sup>11</sup>) and the form is the prayer prescribed in the liturgical books.<sup>12</sup> Right intention is to intend to do what the Church does<sup>13</sup> and in the case of order validity requires that the minister and candidate understand that they intend to impart and receive the particular order as understood in the official teaching of the Roman Catholic Church.

## THE RECOGNITION OF THE ORDERS OF OTHER CHURCHES BY THE ROMAN CATHOLIC CHURCH

When a question is asked about the recognition by the Roman Catholic Church of orders conferred in another Church the orders will be considered

<sup>3</sup> Eg N Doe, *Canon Law in the Anglican Communion* (Clarendon Press, Oxford, 1998), p 137; R Bursell, *Liturgy, Order and the Law* (Clarendon Press, Oxford, 1996), pp 232, 233.

<sup>4</sup> Eg the fashion dating from the 1940s for parish churches to declare themselves 'out of communion' with the Church of South India due to the supposed invalidity of its ministry and the author's experience of promoting Anglican-Methodist co-operation in the Dioceses of Oxford and Ely in recent years.

<sup>5</sup> *Catechism of the Catholic Church*, para 1113.

<sup>6</sup> J Gurrieri, 'Sacramental Validity: The Origins and Use of a Vocabulary' (1981) 41 *The Jurist* 21 at 28.

<sup>7</sup> *Ibid* 21.

<sup>8</sup> *Ibid* 22.

<sup>9</sup> However, canon 951 of the 1917 *Code of Canon Law* admits of the possibility of valid ordination being administered other than by a bishop.

<sup>10</sup> Apostolic Constitution *Sacramentum Ordinis* 30 November 1947.

<sup>11</sup> Apostolic Constitution *Approval of the new rites for the ordination of deacons, presbyters and bishops*, 18 June 1968.

<sup>12</sup> *Code of Canon Law* 1983, canon 1009.

<sup>13</sup> This principle can be traced to the Council of Trent.

as valid, valid but illicit or invalid. For a minister ordained in another Church to function in that ministry in the Roman Catholic Church there is a process which is different depending on the circumstances. The reconciliation of a minister in valid orders is brought about by an administrative process reserved to the Apostolic See.<sup>14</sup> For a minister whose orders are invalid reconciliation is brought about by fresh ordination. In the debate about the recognition of Anglican orders leading up to the publication of the Bull *Apostolicae Curae* in 1896 the theologian Pio Gaspari stated that ‘an ordination that is certainly invalid must be repeated *absolutely*; an ordination that is probably invalid must be repeated *conditionally*.’<sup>15</sup> Orders conferred in the Churches of the Reformation are generally not recognised as valid. Before and after *Apostolicae Curae* former Anglican clergy were re-ordained absolutely. Notoriously, however, on his conversion the Rt Revd (now Monsignor) Graham Leonard, former Bishop of London, was ordained not absolutely but conditionally ‘because [he] had been ordained as an Anglican by a bishop who was in the Old Catholic succession’.<sup>16</sup> This is interesting and significant. *Apostolicae Curae* had declared null and void all ordinations on the basis that, whilst it was arguable that the historic, tactile succession of bishops ordaining bishops had been maintained the form and intention of those ordinations were defective. The conditional ordination of Dr Leonard admits of the possibility that, despite him having been ordained by a bishop of the Church of England according to the rite of the *Book of Common Prayer*, this ordination could have been valid. It should be noted, however, that Dr Leonard was the only ex-Anglican to be re-ordained conditionally in this period. Others, including those ordained by him, were re-ordained absolutely.

## ORDINATION IN THE CHURCH OF ENGLAND

The ordination rites of the Church of England lay down, in rubrics, prefatory material and liturgical texts, some of what the Church of England believes about ordination and ordained ministry. These rites, along with legislation and canons, lay down certain rules about who may be a proper candidate for ordination, who may preside at ordination services and which rites and actions should be used at ordination. However, the specific language of validity, if not the concept too, is rarely if ever found in official texts of the Church of England and the wider Anglican Communion.<sup>17</sup> Gurrieri<sup>18</sup> points out the use of the vocabulary of sacramental validity in the Church of England in the sixteenth and seventeenth centuries. Richard Hooker, the Elizabethan divine, affirmed

<sup>14</sup> For Eastern Orthodox clergy, see the Vatican II decree *Orientalium Ecclesiarum*, para 25.

<sup>15</sup> C Hill and E Yarnold (eds) *Anglican Orders: The Documents in the Debate* (SPCK, 1997), p 82.

<sup>16</sup> G Leonard, ‘By Whose Authority’ in D Longenecker (ed), *The Path to Rome* (Gracewing, 1999), p 28.

<sup>17</sup> The words ‘valid’ and ‘validity’ do not appear at all in the resolutions or study materials of the 1998 Lambeth Conference.

<sup>18</sup> J Gurrieri, ‘Sacramental Validity: The Origins and Use of a Vocabulary’ (1981) 41 *The Jurist* 21 at 40-42.

the validity of baptisms performed by non-conformist ministers.<sup>19</sup> He foresaw situations in which 'there may be sometimes very just and sufficient reason to allow ordination made without a bishop' but qualified this by stating that '... inevitable necessity excepted, none may ordain but only bishops.'<sup>20</sup> The seventeenth century bishop Bramhall uses the language of validity when he states that the conditional re-ordination of Presbyterians was not due to their orders being determined sacramentally invalid but legally so.<sup>21</sup> Here again is the dual concept of validity and liceity. The conditional re-ordination is necessary for legal recognition and lawfulness. Article XXXVI of the *Articles of Religion* does not use the word 'valid' but instead states that those ordained according to the rites of the Church of England are decreed to be 'rightly, orderly, and lawfully consecrated and ordered'. The use of the language of validity by Hooker with reference to baptism, but not holy orders, could be due to the exclusion of holy orders from the category of sacraments in the Church of England. The *Articles of Religion*<sup>22</sup> list the sacraments as being two in number, baptism and holy communion, excluding the five other sacraments of the medieval and modern Roman Catholic Church.<sup>23</sup>

In secular law there is a clear concept of the legal validity of certain actions. This most closely touches the life of the Church in the area of marriage law. A marriage contracted by minors or bigamously, for example, would be invalid.<sup>24</sup> The relationship between state and church law in England is such that such a marriage, even if conducted according to the rites and ceremonies of the Church of England would be invalid in both state and church law.<sup>25</sup> Briden and Hanson in *Moore's Introduction to English Canon Law* state that 'The law of England lays down strict requirements, both of substance and of form, for the celebration of a valid marriage. ... the Church requires compliance with the temporal law before she will recognize a marriage as canonically valid'.<sup>26</sup> Marriage, like holy orders, is excluded from the strict list of sacraments in Article XXV.

<sup>19</sup> Ibid 41.

<sup>20</sup> Ibid 42.

<sup>21</sup> Ibid 40, note 82.

<sup>22</sup> *Articles of Religion*, Article XXV.

<sup>23</sup> Article XXV, describes sacraments as 'certain sure witnesses, and effectual signs of grace, and God's good will towards us, by the which he doth work invisibly in us, and doth not only quicken, but also strengthen and confirm our Faith in him'. The article goes on to state that the remaining five 'commonly called Sacraments ... have not like nature of Sacraments with Baptism, and the Lord's Supper, for that they have not any visible sign or ceremony ordained of God'. The ARCIC I report *Ministry and Ordination*, states that Article XXV does not deny that the five 'commonly called Sacraments' are sacraments but merely that they are not 'necessary for salvation'. See C Hill and E Yarnold, *Anglicans and Roman Catholics: The Search for Unity* (SPCK 1994) p 35. The Catechism of the Catholic Church defines sacraments as 'the signs and instruments by which the Holy Spirit spreads the grace of Christ the head throughout the Church which is his Body': *Catechism of the Catholic Church*, para 774.

<sup>24</sup> Matrimonial Causes Act 1973, s11.

<sup>25</sup> T Briden and B Hanson, *Moore's Introduction to English Canon Law* (3rd edn, Mowbray, 1992), p 77.

<sup>26</sup> Ibid p 77.

There is, therefore, secular and canonical use of the concept and language of validity when applied to marriage in the Church of England. Both Bursell and Doe apply the language of validity to ordination. Bursell states that 'Ordination and consecration affect the legal status of the persons concerned. It is for this reason that particular care must be taken to ensure that the form of service used is a legally valid one'.<sup>27</sup> Bursell does not elaborate on what makes one rite valid and another invalid save to point out that the Church of England provides authorised rites.<sup>28</sup> Doe goes further and states that 'According to liturgical norms, valid ordination takes place by the consent of the candidate and by prayer and laying on of hands by the bishop'.<sup>29</sup>

The liturgical norms cited from the Church of England<sup>30</sup> are the preface and liturgies from the *Book of Common Prayer* of 1662 (*BCP*) and the notes to the ordinal in the *Alternative Service Book 1980* (*ASB*). These sources use imperative language; the *BCP* states that 'No man shall be accounted or taken to be a lawful Bishop, Priest, or Deacon in the Church of England, or suffered to execute any of the said functions, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration or Ordination'. This in itself is a revision of the preface to the Ordinal of 1550/52 which did not contain the phrase 'or hath had formerly Episcopal Consecration or Ordination'. The *ASB* is similarly imperative, stating that 'ministers are ordained by bishops according to authorized forms of service, with prayer and the laying on of hands',<sup>31</sup> that 'Bishops must be ordained by at least three other bishops, joining together in the act of ordination ...'<sup>32</sup> and that 'Priests share with the bishop in laying hands on the heads of those ordained to the order of priesthood. The bishop alone lays his hands on the heads of those ordained to the order of deacon'.<sup>33</sup>

There is, therefore, a strong corpus of liturgical and canon law which regulates and prescribes the precise lawful means by which deacons, priests and bishops are ordained within the Church of England. What is not found, however, is the equation of this lawfulness with sacramental validity as understood in the Roman Catholic Church.

The question of the validity or otherwise of holy orders was recently tested

<sup>27</sup> R Bursell, *Liturgy, Order and the Law*, pp 232, 233.

<sup>28</sup> *Ibid*, p 233, note 29.

<sup>29</sup> N Doe, *Canon Law in the Anglican Communion*, p 137.

<sup>30</sup> *Ibid*, note 45. He also cites the Prayer Books of the Church of the Province of South Africa and the Episcopal Church of the United States of America. The former states that 'The central Act of ordination consists of the imposition of hands by a bishop, together with prayer for the Holy Spirit to give grace for the particular order being bestowed'. This is consistent with the contents of the section in the *Alternative Service Book* Ordinal entitled 'The Ordination'.

<sup>31</sup> *ASB*, p 338, note 1. This is consistent with the Revised Canons Ecclesiastical, Canon C 3, para 4.

<sup>32</sup> *ASB*, p 338, note 2. This is consistent with Canon C 2, para 1.

<sup>33</sup> *ASB*, p 338, note 3. This is consistent with Canon C 3, para 4.

in the secular courts during a defamation case. In this case the claimant, who holds the title of a bishop in an independent Church, sought redress against a national newspaper which described him as an 'imitation' and 'self-styled' bishop following his appearance on a television programme.<sup>34</sup> A stay was granted to the defendant in the case on the grounds that questions of the validity or otherwise of holy orders were not justiciable by the courts. In giving expert evidence in the case Chancellor Mark Hill agreed with the claimant 'that there is no forum or expert anywhere worldwide that can make an objective doctrinal determination as to who is or who is not a validly consecrated bishop'.<sup>35</sup> This case clearly shows that the determination of questions of validity and of the recognition of orders conferred outside any particular Church by that Church rest with that Church in its internal processes; they cannot be objectively decided upon by English secular courts.<sup>36</sup>

#### THE RECOGNITION OF ORDERS OF OTHER CHURCHES BY THE CHURCH OF ENGLAND

At the Reformation the reformed Churches of different parts of Europe ended up with different patterns of ordination. A simple breakdown of the practices of the Churches reveals four separate traditions. First, the pattern in which the threefold order is maintained, the bishop is the invariable minister of ordination and bishops are themselves within a historic succession of bishops ordaining bishops. This is the pattern found in the Anglican Churches, the Lutheran Church of Sweden<sup>37</sup> and, by virtue of their relationship with the Swedish Church, the Lutheran Churches of Finland, Estonia and Lithuania. The second broad pattern is the Norwegian or Danish Lutheran pattern where the office of bishop was retained but the succession of bishops ordaining bishops was broken.<sup>38</sup> In the Churches of Norway and Denmark, despite bishops having been ordained by presbyters, there was continuity in that these bishops continued to occupy historic sees. The third pattern is the German Lutheran pattern where the title of bishop remained but the holder of that office was not seen as having been ordained to an order separate from that of presbyter.<sup>39</sup> The fourth pattern is the Presbyterian pattern, seen clearly in the Reformations in France, Switzerland and Scotland, where the structure and ministry of the Church is radically reformed and the historic threefold order of ministry abolished.

<sup>34</sup> *Blake v Associated Newspapers Ltd* (2003) 7 Ecc LJ 369, QBD.

<sup>35</sup> Evidence dated 23 June 2003 at p 7.

<sup>36</sup> For a fuller treatment of the issues at stake in this case, see C Hill, 'Episcopal Lineage: A Theological Reflection on *Blake v Associated Newspapers Ltd*' (2003) 7 Ecc LJ pp 334-338.

<sup>37</sup> C Hill in *Together in Mission and Ministry: The Porvoo Common Statement with Essays on Church and Ministry in Northern Europe* (Church House Publishing, 1993), p 47.

<sup>38</sup> *Ibid.*

<sup>39</sup> See *The Meissen Agreement* (Council for Christian Unity Occasional Paper No 2), para 16.

With regard to the Presbyterian stream of the reformation, Christopher Hill and Jean-Pierre Monsarrat<sup>40</sup> point to a degree of mutual recognition of ministries, despite the differences of ordination in the sixteenth and seventeenth centuries. This includes 'evidence that non-episcopally ordained clergy were occasionally licensed in the Church of England before 1662'.<sup>41</sup> The evidence is patchy, to say the least. The most concrete example is that of a French Calvinist Minister called Du Moulin who, whilst having been appointed to a canonry at Canterbury, cannot be proved to have exercised any presbyteral ministry there.<sup>42</sup>

In England the Act of Uniformity 1662 meant that non-episcopally ordained ministers from abroad, and those deacons and presbyters ordained during the Commonwealth period, had to submit to being episcopally ordained or else to be ejected from public ministry in the Church of England.<sup>43</sup> As stated above, the 1662 ordinal added the phrase 'or hath had formerly Episcopal Consecration or Ordination' to a similar phrase in the earlier Ordinal. This is generally taken to have been a conservative move, to have limited the recognition of ministry to those who had been ordained by bishops. In some ways, however, it can be seen as widening the circle of those whose ministry is recognised. The preface to the Ordinal of 1550/52 limits lawful recognition to those who were ordained according to the form which followed. The 1662 form permits recognition of any who have received episcopal ordination, possibly according to any rite.

The missionary expansion of the Church of England and the coming into being of something recognisable as the Anglican Communion precipitated the need for a method whereby such ministers ordained overseas could be recognised should they wish to minister in the Church of England. The result was the passing of various statutes such as the Bishops in Foreign Countries Act 1841 and the Colonial Clergy Act 1874. The statute currently in force which governs the recognition of overseas clergy is the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 which gives authority to the archbishops<sup>44</sup> to permit ministers ordained by overseas bishops to officiate in the Church of England. This Measure also governs the recognition of clergy of other Churches. A list of Churches with whom the Church of England is in communion<sup>45</sup> is appended to the Canons of the Church of England.<sup>46</sup> There is no exhaustive list of Churches whose

<sup>40</sup> In *Called to Witness and Service: The Reilly Common Statement with Essays on Church, Eucharist and Ministry* (Church House Publishing, 1999), pp 51-57.

<sup>41</sup> *Ibid* p 53.

<sup>42</sup> *Ibid*. I am grateful to the Rt Revd Christopher Hill, co-author of the Reilly Common Statement, for further information on this subject.

<sup>43</sup> J Webster, 'Ministry and Priesthood' in S Sykes and J Booty (eds) *The Study of Anglicanism* (SPCK, 1988), p 290.

<sup>44</sup> The text of the Measure suggests that they should act jointly.

<sup>45</sup> Sometimes referred to as 'Full Communion' and distinguished in the Measure from those Churches with whom the Church of England is not in communion but whose orders it recognises.

<sup>46</sup> *The Canons of the Church of England* (6th edn, Church House Publishing, 2000), pp 199-201.

orders are recognised by the Church of England despite reference to such a category of persons in the Canons of the Church of England.<sup>47</sup> Under the terms of the Measure, the archbishops have the final and determinative say as to whether another Church is in communion with the Church of England and as to whether another Church's orders are recognised by the Church of England. With one exception no list of, or rationale for, decisions made under the Measure is made public. The exception is to do with the ministry of women bishops and those ordained by them in other parts of the Anglican Communion. According to a statement to the General Synod by the Archbishop of Canterbury<sup>48</sup> in 1989,<sup>49</sup> such ministers are not permitted to minister in the Church of England. Whilst on the one hand this appears to say that any episcopal acts performed by female bishops lack validity, this is not the case. The archbishop specifically states that confirmation imparted by a woman bishop is recognised. Prior to 1994, when women were ordained to the priesthood in the Church of England, female priests from other parts of the Anglican Communion were not permitted to minister as priests in the Church of England. Between 1987 (when women were first ordained to the diaconate) and 1994 women priests from overseas were licensed and permitted to officiate in the Church of England as deacons.<sup>50</sup> When it became possible for women to be ordained as priests in the Church of England the priestly ministry of such women was recognised. There is nothing to suggest that a similar pattern would not be followed were women to be ordained as bishops in the Church of England. By the same token it is presumed that women bishops from other parts of the Anglican Communion may be permitted to minister as priests in the Church of England. It should be noted that the statement of Archbishop Runcie in 1989 was a statement of how he and Archbishop Habgood intended to use the discretion given to them by the Overseas and Other Clergy (Ministry and Ordination) Measure 1987 to determine questions of the recognition of Holy Orders. This approach is not binding on their successors.

Ministers of Churches whose orders are not recognised by the Church of England must be episcopally ordained prior to taking up ministry in the Church of England. This is consistent with the principle laid down in the Act of Uniformity 1662 and the preface to the 1662 Ordinal discussed above. There is a selection process under the auspices of the Ministry Division of the Archbishops' Council of the Church of England.<sup>51</sup>

Significant in any examination of the Church of England's views on

<sup>47</sup> See Canon B 44, para 5, and Canon C 1, para 1.

<sup>48</sup> The Most Revd Robert Runcie on behalf of himself and the Archbishop of York, the Most Revd John Habgood.

<sup>49</sup> For the statement, see (1989) 1(5) Ecc LJ 9. See also N Doe, *Canon Law in the Anglican Communion*, p 352, note 63.

<sup>50</sup> Eg the Revd Dr Susan Cole King and the Revd Joyce Bennett ordained as priests in the USA and Hong Kong, respectively, were both licensed to officiate as deacons in the Diocese of Oxford during this period.

<sup>51</sup> A sub-group of the Division's Recruitment and Selection Committee.

ordination conferred in other Churches is the Church of England (Ecumenical Relations) Measure 1988 and its dependent Canons B 43 and B 44.<sup>52</sup> The Measure and canons are significant in that they recognise not only the existence of other Churches and Christians but also ministers of other Churches. Canon B 43 regulates joint worship and allows some interchangeability of ministry between Church of England parishes and ministers and those of other Churches. Canon B 44 sets out the process for the setting up of Local Ecumenical Partnerships (LEPs) and regulates Church of England participation in them. Special mention is made in Canon B 43 of services of ordination. The permission of the bishop, incumbent and parochial church council is needed for any member of another Church to perform any duty at a service of confirmation or ordination.<sup>53</sup> A bishop needs the permission of the archbishop of the province before accepting an invitation to take part in a service of ordination or consecration in another Church<sup>54</sup> and no minister of the Church of England may, at an ordination service in another Church, 'by the laying on of hands or otherwise, do any act which is a sign of the conferring of holy orders, unless that Church is an episcopal Church with which the Church of England has established intercommunion'.<sup>55</sup>

The ecumenical canons are significant in that a certain amount of recognition is afforded to ordained ministers of other Churches. In certain circumstances such ministers are permitted to celebrate the sacraments of baptism and the Eucharist in parish churches and places of worship of the Church of England. Such ministers are not unconditionally recognised, however, as bishops are compelled to provide unambiguous Anglican worship at certain times during the year. Moreover, the necessity for giving notice and the ban on reservation of the sacrament in such situations suggest that there are some in the Church of England who would object to or not recognise the efficacy of such celebrations.

The ecumenical canons give weight to the theory that the Church of England does not hold to a doctrine of sacramental validity. The implicit permission of Canon B 43, para 9,<sup>56</sup> and the explicit permission of Canon B 44, para 4(1)(f), for members of the Church of England to receive communion at services according to non-Anglican rites and presided over by non-episcopally ordained ministers is not consistent with a view that such sacraments are null or invalid. The corollary of this is that the orders of those who preside at such services cannot therefore be nothing. However, it has already been established that the Church of England has, over the centuries, maintained a strict rule about the necessity for episcopal ordination. These general norms about the recognition of holy orders and their necessity for the exercise of lawful ministry in the Church are able to be suspended by bishops in specific areas designated as LEPs with the

<sup>52</sup> Promulged January 1989.

<sup>53</sup> Canon B 43, para 1(3).

<sup>54</sup> Canon B 43, para 2(b)(iii).

<sup>55</sup> Canon B 43, para 5.

<sup>56</sup> See above.

permission of interested parties and with the provision of safeguards for those who might object.

## CASE STUDIES

### *A canonical re-assessment of Apostolicae Curae*

The conclusion of Leo XIII's bull *Apostolicae Curae* was unambiguous in its condemnation of the validity of Anglican ordination. This judgment was reaffirmed by the Second Vatican Council when, in the Decree on Ecumenism *Unitatis Redintegratio*, non-Catholic Churches were divided into those like the Eastern Orthodox which 'although separated from us, yet possess true sacraments, above all—by apostolic succession—the priesthood and the Eucharist'<sup>57</sup> and the Churches of the Reformation which, despite possessing valid baptism, do not validly celebrate the Eucharist 'especially because of the absence of the sacrament of Orders'.<sup>58</sup> However, it is arguable that despite the reaffirmation of the Reformation Churches' lack of valid orders by the Council that the developments in Roman Catholic Canon Law and Anglican liturgical and ecumenical practice over the course of the twentieth century have actually rendered obsolete the arguments on which the reasoning of *Apostolicae Curae* was based. For instance:

- (1) The 1917 *Code of Canon Law* envisaged situations where the minister of ordination is not a consecrated bishop although the 1983 *Code* seems to have removed that possibility.<sup>59</sup>
- (2) The Apostolic Constitutions *Sacramentum Ordinis*<sup>60</sup> and *Approval of New Rites for the Ordination of Deacons, Presbyters and Bishops*<sup>61</sup> removed any question that any actions other than the laying on of hands with prayer according to recognised rites were part of the matter and form of the sacrament.
- (3) The Roman Catholic Church, through its relationship with Eastern Catholic Churches and Vatican II's acceptance of the validity of the Eastern Orthodox Churches' orders,<sup>62</sup> has shown that it is capable of recognising the validity of orders where the form (i.e. the text of the prayer accompanying the laying on of hands) is different from that in the *Roman Pontifical*.
- (4) It is arguable that, through the participation of bishops from the Old Catholic Churches and the Mar Thoma Syrian Church of Malabar in modern Anglican episcopal and presbyteral ordinations since the publication of *Apostolicae Curae*, that the historic succession, as understood by the Roman Catholic Church, has been restored to the Anglican Communion.<sup>63</sup>

<sup>57</sup> Para 15.

<sup>58</sup> Para 22.

<sup>59</sup> *Code of Canon Law* 1917, canon 951; *Code of Canon Law* 1983, canon 1012.

<sup>60</sup> See note 10 above.

<sup>61</sup> See note 11 above.

<sup>62</sup> *Unitatis Redintegratio* (see above), para 15.

<sup>63</sup> See the discussion of the conditional ordination of Dr Graham Leonard at p 6 above.

- (5) Ecumenical theological dialogue has resulted in the publication of common statements on the nature of the ordained ministry.<sup>64</sup> The first Anglican-Roman Catholic International Commission stated that the consensus of understanding of ministry and ordination that they found 'calls for a reappraisal of the verdict on Anglican orders in *Apostolicae Curae*'.<sup>65</sup>
- (6) Ecumenical convergence in liturgical scholarship and practice has resulted in Anglican ordinals that are significantly closer to their Roman Catholic counterparts than were those of the *Book of Common Prayer* and tridentine *Roman Pontifical*.

This development in the theological, liturgical and canonical thinking of both Churches could, conceivably, be the basis for a re-assessment by the Roman Catholic Church of the validity or otherwise of Anglican Orders. However, it should be pointed out that the Holy See has re-stated that women may not validly receive ordination.<sup>66</sup>

#### *The Old Catholic Churches*

The Old Catholic Churches come from two separate schisms within the post-Reformation Roman Catholic Church. The first, the Church of Utrecht, in the Netherlands, also known under the title *Jansenist*,<sup>67</sup> broke ranks with the Roman Catholic Church in the early eighteenth century over a seventeenth century theological dispute. The second group of Old Catholics was formed by Roman Catholics in Germany, Austria and Switzerland in the aftermath of the First Vatican Council and, in particular, its definition of the doctrine of papal infallibility.<sup>68</sup> These Churches appointed bishops who received episcopal ordination from the Church of Utrecht beginning in 1874.<sup>69</sup> There is clear documentary evidence of the validity of the orders in the eyes of the Roman Catholic Church as discussed above.<sup>70</sup>

The Bishops of the Old Catholic Churches agreed a doctrinal statement in 1889<sup>71</sup> and formally recognised the validity of Anglican orders in 1925.<sup>72</sup> Old Catholic Bishops have frequently taken part in episcopal ordinations in the Church of England.<sup>73</sup> The Churches entered into a relationship of

<sup>64</sup> Eg 'The report of the First Anglican-Roman Catholic International Commission Ministry and Ordination' (1973) in C Hill and E Yarnold (eds), *Anglicans and Roman Catholics: The Search for Unity* (SPCK, 1994), pp 29ff.

<sup>65</sup> *Ibid* p 40.

<sup>66</sup> Apostolic Letter *Ordinatio Sacerdotalis* 22 May 1994, and the subsequent explanatory document *Responsum ad dubium circa doctrinam in Epist. Ap. 'Ordinatio Sacerdotalis' traditam* of the Congregation for the Doctrine of the Faith, 28 October 1995.

<sup>67</sup> S Neill, *Anglicanism* (Penguin, 1958), p 372.

<sup>68</sup> *Ibid*.

<sup>69</sup> *Ibid*.

<sup>70</sup> As evidenced by the conditional re-ordination of Dr Graham Leonard.

<sup>71</sup> The Declaration of Utrecht.

<sup>72</sup> F Cross and E Livingstone (eds) *Oxford Dictionary of the Christian Church* (Oxford 1997) p 1180.

<sup>73</sup> Neill, *Anglicanism*, p 373.

communion with the Church of England following the Bonn Agreement of 1931. The agreement is simple:

- (1) Each Communion recognises the catholicity and independence of the other and maintains its own.
- (2) Each Communion agrees to admit members of the other Communion to participate in the Sacraments.
- (3) Intercommunion does not require from either Communion the acceptance of all doctrinal opinion, sacramental devotion, or liturgical practice characteristic of the other, but implies that each believes the other to hold all the essentials of the Christian Faith.<sup>74</sup>

The simplicity of the agreement is possible because the Church of England (and other Churches of the Anglican Communion who have themselves accepted the agreement)<sup>75</sup> was able to recognise that the ordinations carried out in the Old Catholic Churches were carried out by bishops in the historic succession and thus recognisably lawful and consistent with the prescription of the preface to the 1662 Ordinal. Reconciliation with Churches where ordinations cannot be so easily recognised is not as simple.

#### *The Church of South India*

The Church of South India came into being in 1947 after a lengthy process. It brought together Anglican, Methodist and the already united Presbyterian and Congregational Churches in the South of India into one united Church. The Anglican Church in question was not the Church of England but certain dioceses of the Church of India, Burma and Ceylon. In 1920 the Anglican Churches and the South India United Church issued a joint statement which sought to set out the basis of a union.<sup>76</sup> The Churches agreed that:

....after union all future ordinations to the Presbyterate would be performed by the laying on of hands of the Bishops and Presbyters; and that all consecrations of Bishops would be performed by Bishops, not less than three taking part in each consecration,

but also agreed that:

With reference to the question of equality of ministry, it was recorded that the South India United Church makes it a condition of union that its present ministers (Presbyters) shall after union be recognized as ministers (Presbyters) without re-ordination.

This basic agreement remained the pattern for the establishment of the Church of South India. The method by which the union was achieved was in an 'Inauguration Service' in Madras in 1947. Five Anglicans who were already in Anglican episcopal orders and who would serve as bishops

<sup>74</sup> 'The Bonn Agreement' in G Evans and J Wright (eds), *The Anglican Tradition* (SPCK, 1991), p 396.

<sup>75</sup> Neill, p 373.

<sup>76</sup> Evans and Wright, *The Anglican Tradition*, p 379.

in the CSI were initially ‘commissioned by a SIUC and a Methodist Presbyterian “to exercise the office of a bishop in all the congregations of all Church Councils of the SIUC [the South India Province of the Methodist Church]”’.<sup>77</sup> Following this commission the five bishops consecrated eight ministers of the SIUC and Methodist Church as bishops to serve in the United Church. The rite used was composed for the occasion but was based on the proposed Church of England ordinal of 1928.<sup>78</sup> In the immediate aftermath of the inauguration the structures of the constituent Churches were united to bring about a single, autonomous Church divided into fourteen dioceses.<sup>79</sup>

The agreement to bring about the CSI is significant in that it crystallised Anglican opinion, and from it can be drawn some principles, particularly to do with the reception, recognition and reconciliation of holy orders. These principles can be laid out thus:

- (1) Anglicans believe episcopal ordination to be non-negotiable in a fully, visibly united Church;
- (2) However, the ministry of presbyters ordained other than by bishops in the historic succession can be recognised at local level provided that future ordinations in a local church are episcopal;
- (3) Whilst this recognition is afforded within the united Church it will not necessarily be afforded outside it;
- (4) The reconciliation of ministries goes hand in hand with the harmonisation of ecclesiastical structures and governance.

#### *The Anglican-Methodist Unity Scheme 1968*

The Anglican-Methodist Unity Scheme of 1968 failed to achieve a sufficient majority in the General Synod of the Church of England in 1972, having already achieved a 75 per cent majority in the Methodist Conference of the same year.<sup>80</sup> The scheme proposed a two-stage integration of two separate Churches. The first stage would be the reconciliation of ministries and, therefore, the establishment of communion between the two Churches. The second stage would be the integration of the structures of the two Churches to bring about a single Church. This proposal differed from the Church of South India in that the structural integration was not to have happened immediately but at a later, undetermined, date.<sup>81</sup> The reconciliation of the ministries of the Church was to have been brought about by statutory and liturgical means.

The liturgical method was two-fold. The Methodist Church would appoint certain candidates who would receive ordination as bishops from the bishops of the Church of England. Future Methodist ordinations would

<sup>77</sup> ‘The Inauguration Service’ in B Sundkler, *Church of South India - The Movement towards Union 1900-1947* (2nd edn) (Lutterworth Press, 1965), p 342.

<sup>78</sup> *Ibid* p 342.

<sup>79</sup> *Ibid* p 341.

<sup>80</sup> *An Anglican Methodist Covenant* (Church House Publishing, 2001), para 61.

<sup>81</sup> *Anglican-Methodist Unity: 2 The Scheme* (SPCK/Epworth Press, 1963), p 87.

have been invariably carried out by Methodist bishops. However, prior to the ordination of these Methodist bishops, there were also to have been a number of 'Acts of Reconciliation'<sup>82</sup> wherein the bishops and other clergy of the Church of England would have had hands laid on them by Methodist ministers, and Methodist clergy would have had hands laid on them by a bishop and four priests of the Church of England. The scheme, with its Act of Reconciliation and the ordination of Methodist bishops built on the scheme of the Church of South India. It did not propose the unconditional acceptance of the ministry of non-episcopally ordained ministers by the Church of England as had happened with the Anglican Church in India but it also stopped short of the unambiguous re-ordination of those ministers. It followed the Church of South India in seeing the structural unity of the Church as a necessary corollary of the reconciliation of ministry but recognised that this would take considerable time to bring about.<sup>83</sup>

#### *The Meissen Declaration*

The agreement between the Protestant Churches of Germany and the Church of England is not an agreement bringing about a relationship of full communion between the two Churches; neither does it bring about the reconciliation of the ministries of the Churches. However, it is important to note why it did not achieve this. The Lutheran, Reformed and United Churches of Germany did not maintain the historic three-fold order of ministry after the Reformation. Martin Luther considered that presbyters and bishops were of one single order.<sup>84</sup> The Evangelical Church in Germany (EKD) elects presbyters to a position usually known as bishop,<sup>85</sup> but they are not ordained to a separate order and, on resignation or retirement, revert to the status of a presbyter.

Differences of opinion over the necessity for episcopal ordination and for bishops to be ordained within the historic succession meant that the Meissen Declaration only went as far as each Church acknowledging 'one another's ordained ministries as given by God and instruments of his grace' and acknowledged that 'personal and collegial oversight (*episcopo*) is embodied and exercised in our churches in a variety of forms'.<sup>86</sup> It paved the way for the participation in each other's worship, including ordinations<sup>87</sup> and for ministers of each Church to exercise their ministry in

<sup>82</sup> Ibid pp 103 ff.

<sup>83</sup> Ibid p 87.

<sup>84</sup> D Wendebourg, 'The Reformation in Germany and the Episcopal Office' in *Visible Unity and the Ministry of Oversight* (Church House Publishing, 1996), p 50.

<sup>85</sup> Ibid p 66.

<sup>86</sup> *The Meissen Agreement* (Council for Christian Unity Occasional Paper No 2), para 17.

<sup>87</sup> According to Canon B43, para 5, 'A bishop or priest who has accepted an invitation to take part in the ordination or consecration of a minister of a Church to which this Canon applies may not, by the laying on of hands or otherwise, do any act which is a sign of the conferring of holy orders, unless that Church is an episcopal Church with which the Church of England has established intercommunion'.

the other Church.<sup>88</sup> However, the agreement, in its own words 'falls short of full interchangeability of ministers'.<sup>89</sup>

*The Porvoo Agreement*<sup>90</sup>

Before the conversations which led to the Porvoo Agreement, the Church of England had already entered into relationships of communion with the Churches of Sweden, Finland, Latvia and Estonia,<sup>91</sup> and there had been mutual participation of bishops in episcopal consecrations between these Churches. There was, therefore, a tradition of the recognition of holy orders conferred within these Churches. During and after the Reformation, however, the succession of bishops ordained by bishops was broken in certain of the Nordic and Baltic Churches.<sup>92</sup> The rationale of the Porvoo Common Statement, however, was that the historic, apostolic succession was to be understood as being found not only in the succession of bishops ordaining bishops but also in the succession of bishops being ordained (by whatever means) to serve in the existing sees of the Catholic Church.<sup>93</sup> This rationale was accepted by the Churches who signed the common statement, as was the statement that:

The mutual acknowledgement of our churches and ministries is theologically prior to the use of the sign of the laying on of hands in the historic succession. Resumption of the use of the sign does not imply an adverse judgment on the ministries of those churches which did not previously make use of the sign. It is rather a means of making more visible the unity and continuity of the Church at all times and in all places,<sup>94</sup>

and that:

those churches in which the sign [of the historic episcopal succession] has at some time not been used are free to recognize the value of the sign and should embrace it without denying their own apostolic continuity. This also means that those churches in which the sign has been used are free to recognize the reality of the episcopal office and should affirm the apostolic continuity of those churches in which the sign of episcopal succession has at some time not been used.<sup>95</sup>

For the Church of England, these Churches are now designated as

<sup>88</sup> *The Meissen Agreement*, para 17.

<sup>89</sup> *Ibid* para 17.

<sup>90</sup> An agreement between the Nordic and Baltic Lutheran Churches and the Anglican Churches of the British Isles 1993.

<sup>91</sup> C Hill in *Together in Mission and Ministry: The Porvoo Common Statement with Essays on Church and Ministry in Northern Europe* (Church House Publishing, 1993), pp 53-58.

<sup>92</sup> The Churches of Norway, Denmark and Iceland.

<sup>93</sup> *Porvoo Common Statement*, para 34.

<sup>94</sup> *Ibid* para 53.

<sup>95</sup> *Ibid* para 57.

Churches in communion with the Church of England.<sup>96</sup> No distinction is drawn between those Churches where the historic, tactile succession has been broken and those where it remains intact. Such ministers are, therefore, eligible to be permitted to officiate in the Church of England by the archbishops under the terms of the Overseas and Other Clergy (Ministry and Ordination) Measure 1967.

The significance of the Porvoo Declaration, entered into by the Church of England by Act of Synod and signed by the Archbishops of Canterbury and York in 1995, is that it shows that changes in theological understanding, in this case on the nature of the historic episcopal succession, can have practical effects on the recognition and reconciliation of ordained ministry. However, the principle that all future ordinations should be by bishops within the historic succession as traditionally understood is found in the commitment by those Churches that lost this 'sign' to take it up again.<sup>97</sup> The principle of the link between reconciliation of holy orders and reconciliation of the structures of Churches does not feature to a great extent in the Meissen and Porvoo declarations. The reason for this is that these declarations are between national Churches in different countries.<sup>98</sup> The Porvoo Declaration recognises that there are diaspora congregations and individual members of signatory Churches in the territory of other Churches and recommends that they be integrated into the life of the indigenous Church.<sup>99</sup>

## CONCLUSION

In conclusion, lawful reception of Holy Orders in the Church of England is achieved by prayer with laying on of hands by a bishop according to the authorised liturgy of the Church. Ministers who have received ordination in other Churches may be recognised and permitted to officiate in the Church of England by the archbishops. This recognition is afforded to ministers of the Churches of the Anglican Communion (except those ordained by women bishops) and ministers of other Churches with whom the Church of England is in communion, presumably with the same caveat.<sup>100</sup> It may also be afforded by the archbishops to ministers of other Churches whose ministry is recognised by the Church of England.

In both Roman Catholic and Anglican Churches the method for receiving holy orders, whether as deacon, presbyter or bishop (where applicable) is by the laying on of hands with prayer according to the prescribed liturgical forms. Both Churches claim to maintain the historic succession

<sup>96</sup> *The Canons of the Church of England*, p 201.

<sup>97</sup> *Porvoo Common Statement*, para 57.

<sup>98</sup> *Ibid* para 9.

<sup>99</sup> *Ibid* para 58(b)(ii), (iii) and (iv). An example of this is the integration of the ministers of the Scandinavian Mission to Seafarers in London into the Bermondsey Deanery of the Diocese of Southwark.

<sup>100</sup> The Churches of Sweden and Norway have women bishops. See *The Church of England Year Book* (Church House Publishing, 2004), pp 418, 419.

of bishops ordaining bishops from the time of the apostles and restrict (notwithstanding the provisions of the 1917 Code of Canon Law) presidency at an ordination service to a bishop.

Both Churches maintain rules about who may be ordained and by whom, and there are mechanisms whereby the orders of one ordained in another Church may be recognised and reconciled with the ministry of the Church. The Roman Catholic Church has a well developed concept of the sacramental validity of the holy orders that it imparts and recognises the orders of other Churches as either valid and licit (lawful), valid but illicit or invalid. Ministers of other Churches who wish to minister in the Roman Catholic Church but who are not validly ordained must be freshly ordained according to the rites of the Roman Catholic Church.

The Church of England does not use the language of validity in its corpus of ecclesiastical law concerning holy orders; neither does this language appear in ordination liturgies or in ecumenical dialogues. However, the Church of England does have a developed sense of what constitutes lawful ordination but the laws on who may be ordained<sup>101</sup> and the prescribed liturgies have been subject to change. The Church of England sees ordination by a bishop in the historic succession as normative and ministers of other Churches who have not been episcopally ordained must be freshly ordained before they can minister in the Church of England. Decisions about whether or not the Church of England recognises the holy orders of another Church rest with the Archbishops of Canterbury and York, who also licence and permit clergy from Churches with recognisable holy orders to officiate in the Church of England.

There are certain anomalies in the Church of England's position in that a limited amount of interchangeability of ministry in the Church of England is allowed under the provisions of Canons B 43 and B 44, and it is arguable that the Porvoo Declaration weakened the Church of England's insistence on ordination only by bishops within the historic succession.

Both Churches have entered into agreements with other Churches in which holy orders are reconciled. The Roman Catholic Church has entered into agreements with the Eastern Catholic Churches which were brought about piecemeal by treaties or agreements between the Holy See and the particular Church. In the present day the competent authority of the Church of England to enter into such an agreement is the General Synod by Act of Synod.

<sup>101</sup> For instance the Priests (Ordination of Women) Measure 1992 allowed the ordination of women to the priesthood. Women ordained in other parts of the Anglican Communion prior to this did not require re-ordination after this point to minister in the Church of England. Their ordination prior to this was not, therefore, invalid but not recognised as lawful.