Introduction

The following study was commissioned by the Christian Legal Studies Project of the Center for the Study of Law and Religion at Emory University. The Christian Legal Studies Project has two main concerns. The first is a concern with how Christian churches might address the legal, social and political issues of the day in a distinctive voice, a voice schooled by the biblical learning, historical doctrines and moral teachings of the Christian tradition. The second is an ecumenical concern with how contemporary Christian churches might take advantage of the unprecedented opportunities for mutual understanding and joint ministry afforded by the collapse of Communism and the dynamics of globalization.

A key factor in both of these concerns is what John Witte, Jr., director of the Christian Legal Studies Project, calls the capacity for Christian self-rule. Such autonomy, while generally recognized as a good, is a more complex value than commonly supposed. Self-rule means religious liberty, the freedom of churches and individual Christians to act in the public square. But it also means the capacity for self-government on the part of churches themselves. In the past, historical Christian churches devised highly sophisticated means of self-government and self-regulation including ecclesiastical offices, decision-making bodies, codes of law, rules of jurisprudence and handbooks of doctrine, morality, law and church polity. In many churches today, however, a hermeneutics of suspicion operating within as well as outside the church questions the value of these once-mighty instruments of church government, construing them as devices of exclusivism or anti-evangelical legalism. Whatever the merits of such criticism – and it would be wrong to deny them – the weakening of Christian jurisprudence inevitably diminishes the capacity of churches to deal with internal and external challenges to their ministry. Ecclesiastical disputes that once would have been settled jurisprudentially become inflamed and infect the whole body. Strident rhetoric drowns out judgment. Wars of words replace responsible decision-making. Discord in the church is not a

new phenomenon, of course, and there is no reason to suppose that today's disputes are worse than those that earlier generations of Christians had to wrestle with. What is new is the refusal to resolve conflicts in a timely, economical and principled manner. The Christian Legal Studies Project seeks to inspire fresh interest in the means of Christian self-rule with a view to assuaging some of the antagonisms that undermine the church's ministry and darken the ecumenical horizon in our time.

With respect to the antagonisms afflicting church life in our day, the following study devotes considerable attention to conflicts over authority in the contemporary Anglican Communion. One reason for this focal point is the author's affiliation with the Anglican Communion through membership in the Episcopal Church, an Anglican body that has grown increasingly estranged from the global Anglican fellowship since the consecration of V. Gene Robinson, a non-celibate homosexual, as bishop of New Hampshire in 2003. But the author's religious affiliation is not the main reason for devoting approximately one third of this study to Anglicanism. The justification lies in the inherent value of the Anglican case as an illustration of the dynamics of decision-making in the church. Ecclesial decision-making, not Anglicanism, is the focus of this study. But in a discussion of decision-making it is important to examine actual cases, and to do so in some detail, rather than remaining on the theoretical level. I believe that this study will amply demonstrate the value of the Anglican case for the investigation of decision-making in the Christian church generally.

BY SCHISMS RENT ASUNDER

Nothing demonstrates the need for a fresh look at the means of ecclesiastical government better than the threatened or emergent schisms assailing historical churches at the present time. The schismatic spirit appears in diametrically opposed forms: a divisive progressivism and a divisive traditionalism. Progressivist Christians claim prophetic license to divide the church for the sake of its ministry to the world. Traditionalist Christians claim priestly license to preserve the purity of the church by separating it from the world. On the surface it might appear as if traditionalists have the stronger commitment to community values, since they appear to be defending the corporate identity of the church. But in modern times, with the spread of humanistic and democratic ideals, traditionalist purism inevitably comes at the expense of driving large numbers of Christians out of the church. In that sense, traditionalism precipitates

schism as frequently as progressivism – the quiet schism of indifference and withdrawal.

While they might not admit it, progressivists and traditionalists have much in common. Both adopt a go-it-alone approach to ministry, rejecting the idea of a comprehensive church. Both shun fellowship – traditionalists by rejecting fellowship with the world, progressivists by spurning the fellowship of the church. In church government, traditionalists tend to favor centralizing polities while progressivists incline to centrifugal polities. They concur in their dislike of the middle.

Flight from fellowship is pervasive in Christendom today. One sees it in episcopally governed global communions, in historical Reformation churches and in congregationalist associations. The leadership of the Roman Catholic Church, dissipating the social and ecumenical capital generated by Vatican II, is reasserting Roman particularism in the form of the papal monarchy, priestly celibacy and other tokens of traditionalism despite the fact that these commitments are turning large numbers of Catholics away from their church, especially in the West.[1] In Anglicanism, meanwhile, leadership elites promoting revisionist teachings on human sexuality have divided the worldwide Anglican Communion, casting doubt on the possibility of sustaining a global fellowship of churches.

Orthodox churches, too, are struggling with what it means to be a global communion of churches following the unprecedented liberation they experienced following the collapse of Communism in 1989–91. Some steps toward enhancing Orthodox unity and cooperation have been taken, such as the healing of the schism between the Moscow patriarchate and the Russian Orthodox Church Outside Russia in 2007.[2] Yet Orthodoxy still suffers from unseemly jurisdictional schisms, some inherited, some new. In Ukraine, the largest historically Orthodox land in the world after Russia, no fewer than four antagonistic Eastern-rite churches vie for the loyalty of the population. Nor are small Orthodox communities free of such rivalries. In Estonia, there are now two competing Orthodox churches as a result of the failure of ethnic Estonians

[1] See Francis Oakley and Bruce Russett, eds., *Governance, Accountability, and the Future of the Catholic Church* (New York and London: Continuum, 2004).

[2] The schism was a product of the upheaval in Russian Orthodoxy following the Russian Revolution and civil war (1917–21). In the 1920s, some of the Russian Orthodox bishops in the emigration broke with the Moscow patriarchate and formed an independent body, which came to be known as the Russian Orthodox Church Outside Russia. By the arrangement agreed to in 2007, ROCOR became an autonomous church within the fellowship of the Moscow patriarchate, preserving its own governing institutions but recognizing the authority of the patriarch of Moscow and the Local Council of the Russian Orthodox Church (to which it sends delegates).

and ethnic Russians to find a common ground in Orthodoxy itself. In the diocese of the Moscow patriarchate in England, the decision of the bishop to transfer his loyalty from Moscow to Constantinople divided his small community. As for the Americas, a maze of multiple jurisdictions continues to obscure Orthodox unity.

The flight from fellowship is evident in the continuing practice of episcopal boycott and refusal of hospitality on the part of Orthodox hierarchs. So, for example, the ecumenical patriarch (patriarch of Constantinople), Demetrius I, did not see fit to attend the millennial council of the Russian Orthodox Church in 1988, lest he be overshadowed by the patriarch of Moscow – a stunning example of failure to rejoice with those who rejoice. A few years later, the patriarch of Moscow, Aleksii II, engaged in similar behavior by refusing the request of Pope John Paul II to visit the Russian Church. The reason most often cited for Aleksii's coldness was Moscow's suspicion of Roman Catholic ambitions in Russia, but the weightier factor was the Moscow patriarchate's fear of alienating its own anti-ecumenical right wing. In any case, a historic opportunity was missed. The leaders of the two largest churches in the post-Communist East found it impossible to sit down together, celebrate the moment and promote the Gospel.

In contemporary Protestantism, too, the forces of traditionalism and progressivism impede the cultivation of fellowship. The Latvian Evangelical Lutheran Church affords an example. The denomination exists both in Latvia and in Latvian communities abroad. A half-century of Communism in Latvia (1940–91) led to the creation of separate ecclesiastical jurisdictions in the emigration, but the doctrine and polity of the Latvian church remained unified. Since the fall of Communism, however, the leaders of the domestic Latvian church have embraced a species of traditionalism that puts them at odds with their coreligionists abroad. To ensure the triumph of traditionalism, they revised their church constitution in 2007 in a rather un-Lutheran way by centralizing authority in the office of the archbishop and two newly created regional bishops. This episcopal triumvirate decides all issues of doctrine and liturgical practice for the church.[3] So, for example, the archbishop and his colleagues refuse to accept female clergy even though ordained women serve Latvian Lutheran churches in the emigration and could serve churches in Latvia, too, at an earlier time. A small, linguistically distinctive religious community such as the Latvian Evangelical Lutheran Church has every reason to foster unity

[3] Information on the organization of the church, including the text of the constitution (*Satversme*) of 2007, may be found on the church's website, www.lelb.lv/.

among its members, yet it has become a microcosm of the antagonism between traditionalism and progressivism in global Christianity.

The traditionalist leaders of the Latvian church have also steered their community away from ecumenical agreements. One sees this most clearly in the Latvian church's refusal to join the Porvoo Communion, a network of Anglican and Lutheran churches in northern Europe.[4] One of the success stories of recent ecumenism, the Porvoo Communion is a fellowship of Anglican and Lutheran churches, which formally recognize each other's doctrine, liturgy, clergy and ministry as manifestations of the one holy catholic and apostolic church. An agreed statement spelling out this common understanding was signed by representatives of twelve churches in the Lutheran cathedral of Porvoo, Finland, in 1992 and took effect as the governing bodies of the signatory churches endorsed the agreement during the next four years. Ten of the signatory churches ratified Porvoo: the Anglican churches of England, Ireland, Scotland and Wales, and the Lutheran churches of Iceland, Norway, Sweden, Finland, Estonia and Lithuania. The Latvian Lutheran leadership held back, refusing to submit the Porvoo agreed statement to their synod.

The other church that failed to join in the Porvoo Communion was the Lutheran church of Denmark, the Folkekirke (People's Church). The Folkekirke is still a state establishment, and as the Danish state has evolved into one of the most democratic in the world, so has the church that depends on it. This democratism at the top, guaranteed by the Danish Parliament, combines with a strong emphasis on congregational autonomy deriving from the prophetic theology of N. S. F. Grundtvig (1783–1872) and a species of Christian individualism inspired by Kierkegaard (1813–55). Rejecting synodical government and entrusting its destiny instead to Danish democracy, the Folkekirke shuns ostensibly binding relationships with other churches. If the Latvians rejected Porvoo because it seemed to threaten traditionalism, the Danes rejected it because it seemed to threaten autonomy.[5]

[4] See Ola Tjørhom, ed., *Apostolicity and Unity: Essays on the Porvoo Common Statement*, Foreword by Archbishops K. G. Hammar and David Hope (Grand Rapids, MI, and Cambridge: William B. Eerdmans Publishing Company; Geneva: WCC Publications, 2002), and the Porvoo Communion's website, www.porvoochurches.org/.

[5] The Danish position has changed. In December, 2009, the Interchurch Council of the Folkekirke, with the support of the College of Bishops, announced that the church would become a full member of the Porvoo Communion, and in October, 2010, Danish church leaders signed the Porvoo Agreement in Copenhagen Cathedral. However, in the absence of synodical government and a church constitution in the Danish church, the leadership's accession to Porvoo is open to challenge by defenders of the church's traditional understanding of its independence.

Elsewhere in Lutheranism, schisms are emerging as a result of revisionist approaches to human sexuality. A split is developing in the Evangelical Lutheran Church in America following the ELCA's Churchwide Assembly of 2009, which opened the pastorate of the ELCA to persons living in same-gender relationships. Within three months of the Assembly, a movement calling itself the Lutheran Coalition for Renewal (Lutheran CORE) held a national organizing meeting and began laying the foundations for a Lutheran fellowship outside the ELCA.[6] In the Lutheran Church of Norway, a less drastic solution is being implemented following the decision by the General Synod in 2007 to allow each bishop and appointing body to determine whether they will or will not appoint persons living in same-gender partnerships to clerical office.[7] While this might seem like a reasonable solution, it sets the Norwegian church on the road to replacing its synodical polity with diocesan-level, if not sub-diocesan, independency. The splintering of national Lutheran bodies in turn threatens global Lutheran fellowships such as the Lutheran World Federation. In the closing years of the twentieth century, leaders of the LWF proclaimed that their fellowship was moving "from federation to communion."[8] That bold assertion has less plausibility today.

So what about congregationalism? In an age of pluralism, relativism and culture wars, does congregationalism promise a higher degree of Christian fellowship than alternative polities? If this proved to be the case, it would represent an ironic turn of events for modern congregationalism. In the twentieth century, congregationalists devoted a great deal of energy and material resources to the pursuit of Christian unity beyond the congregational level. The Christian Church (Disciples of Christ) was one of the pioneers of the Ecumenical Movement. The United Church of Christ, the product of a union of four separate Protestant denominations, was also strongly committed to ecumenism. The deceleration of the Ecumenical Movement since the end of the twentieth century has hurt these denominations. To the extent that they are now embracing post-ecumenical pluralism, they are not doing so with any more success

[6] See Lutheran CORE's website, www.lutherancore.org/.

[7] See Church of Norway, "A New Arrangement for Ordination and Appointment of Persons Living in Registered Same-Sex Partnership," November 19, 2007, www.kirken.no/english/news.cfm?artid=162582.

[8] Jens Holger Schjørring, Prasanna Kumari and Norman A. Hjelm, eds., Viggo Mortensen, coordinator, *From Federation to Communion: The History of the Lutheran World Federation* (Minneapolis: Fortress Press, 1997).

in terms of preserving and promoting Christian fellowship than churches with other types of polities.

A small but instructive case in point is afforded by the decision in 2006 of the Puerto Rican Conference of the United Church of Christ to sever its ties with the denomination because of the latter's vigorous affirmation of homosexuality in the life of the church.[9] The Iglesia Evangélica Unida de Puerto Rico, formed in 1931 by congregations deriving from American Congregationalist missionary activity going back to the nineteenth century, became a conference of the United Church of Christ in 1961, just three years after the formation of the new denomination. The ties between the Puerto Rican Conference and the UCC were never juridically binding, since the polity of the UCC is congregationalist. Nevertheless, the existence of a Puerto Rican Conference was symbolically important for the UCC. As the heir of New England Congregationalists and German-American Evangelicals, the UCC is an overwhelmingly white, middle-class and (now) anglophone church. The Puerto Rican Conference was a much-valued element of racial, cultural and linguistic diversity. What the leadership of the United Church of Christ failed to foresee was the possibility of one diversity policy (the mainstreaming of homosexuality in the church) canceling out another (the Puerto Rican Conference). In fact, one might question whether the UCC's approach to sexuality has contributed very much to the church's cultural diversity, since the view of sexuality that the denomination is promoting finds acceptance mainly in the stratum of the American population from which the UCC has always drawn the large majority of its adherents.

CONCILIAR FELLOWSHIP

The annals of Christian jurisprudence contain many arrangements designed to nurture the fellowship of the church and guard against schism. In this book we are concerned with one of them in particular – *conciliarism*. In the sense in which we are using the term, conciliarism means decision-making by means of councils, that is to say, by means of formally constituted, trans-local leadership assemblies called together to resolve issues affecting the life and ministry of the church. Conciliarism so defined is a complex phenomenon, assuming a variety of forms in the

[9] See United Church of Christ News, "Vote by UCC Puerto Rico Conference to Disaffiliate 'Deeply Painful,' Says UCC Leader," June 12, 2006, www.ucc.org/news/vote-by-ucc-puerto-rico.html.

history of the church. Councils may be standing bodies or occasional gatherings. They may be clerical assemblies or mixed assemblies of clergy and laity. They may be parts of a composite polity or the defining element of a polity. They may record their actions or not record their actions. They may be large and influential, or small and uninfluential. They may also be large and uninfluential, or small and influential. Whatever form they take, however, councils are necessarily collaborative. They engage many voices, embodying what Bulgakov called the "multi-unity" of the church.[10]

Yet councils are not constituted by collaboration alone. To be conciliar, collaboration must have a trans-local dimension. A family is not a council. A single congregation can be conciliar to the extent that it is trans-domestic and in so far as its decision-making institutions are collaborative. But if other congregations professing the same faith exist, a congregation cannot be conciliar unless it makes decisions in collaboration with the other congregations, in other words, unless it steps beyond the local level.

Conciliarism is one of the oldest means of decision-making in the history of the Christian church. Indeed, the most distinguished Orthodox ecclesiologist of the twentieth century argued that "at the moment of its establishment the Church contained within itself a potential council."[11] Alexander Schmemann, another leading Orthodox theologian, stated the case in the same way: "Before we understand the place and the function of the council *in* the Church, we must, therefore, see the *Church herself as a council*."[12] The first team of Protestant and Orthodox scholars commissioned by the World Council of Churches to study conciliarism started from the same assumption:

> By conciliarity we mean the fact that the Church in all times needs assemblies to represent it and has in fact felt this need. These assemblies may differ greatly from one another; however, conciliarity, the necessity *that* they take place, is a constant structure of the Church, a dimension which belongs to its nature. As the Church itself is an "assembly" and appears as assembly both in worship and many other expressions of its life, so it needs both at the local and on all other possible levels representative assemblies in order to answer the questions which it faces.[13]

[10] Sergius Bulgakov, *The Orthodox Church*, rev. trans. Lydia Kesich, Foreword by Thomas Hopko (Crestwood, NY: St. Vladimir's Seminary Press, 1988), 66.
[11] Nikolai Afanas'ev, *Tserkovnye sobory i ikh proiskhozhdenie* (Moscow: Sviato-Filaretovskii Pravoslavno-Khristianskii Institut, 2003), 42.
[12] Alexander Schmemann, "Towards a Theology of Councils," in *Church, World, Mission: Reflections on Orthodoxy in the West* (Crestwood, NY: St. Vladimir's Seminary Press, 1979), 163.
[13] *Councils and the Ecumenical Movement*, World Council of Churches Studies 5 (Geneva: World Council of Churches, 1968), 10.

The extent to which one may speak of conciliarism in the New Testament is an issue that will be treated below in Chapter 1. By the end of the second century, however, councils had become a familiar structure of church life, and they have remained so ever since. Their distribution in time and space has been uneven, with periods of conciliar activism yielding to seasons of conciliar drought. A gap between theory and practice can also be observed, as councils have at times been idealized and canonized while actual conciliar practice withered away. But at no time and in no province of the Christian church has conciliarism been so eclipsed as to become something totally foreign to the church. Councils are one of the signature institutions of the Christian tradition.[14]

Evidence for this can be seen in the relatively stable terminology of conciliarism, a terminology that was devised in the third century and has been used ever since. The Greek-speaking East settled on the term *synodos* to denote an authoritative, trans-local ecclesiastical assembly. The Latin-speaking West came to use *concilium*. Both were secular terms for assembly, and neither had biblical or theological associations to begin with. *Synodos* occurs as far back as Herodotus and Euripides, but it does not appear in the Greek New Testament. In time, however, both terms acquired ecclesial resonance. In a famous, if unscientific etymology, Isidore of Seville (d. 636) derived *concilium* from the Latin word for eyelid (*cilium*) and the prefix *con* meaning "with" or "together." By this trope, a council is an assembly of many eyes seeking a common focus or a common view – an exercise in seeing together, seeing eye to eye. The father of medieval canon law, Gratian, adduced a version of Isidore's etymology in his *Decretum* (*c.* 1140). Thereafter it became a commonplace of conciliar discourse.[15]

[14] The broad distribution of conciliar structures in the Christian movement, past and present, is well illustrated by the thirty essays collected in Alberto Melloni and Silvia Scatena, eds., *Synod and Synodality: Theology, History, Canon Law and Ecumenism in New Contact. International Colloquium, Bruges 2003* (Münster: LIT Verlag, 2005). The collection testifies to the renewed interest in conciliarism as a means of dealing with a wide range of pressing ecclesiological and ecumenical concerns.

[15] *Decretum magistri Gratiani*, Part 1 of *Corpus iuris canonici, Editio Lipsiensis secunda, post Aemilii Ludouici Richteri curas ad librorum manu scriptorum et editionis romanae fidem recognouit et adnotatione critica instruxit Aemilius Friedberg*, repr. edn. (Graz: Akademische Druck- u. Verlagsanstalt, 1959), D. 15, C. 1. The sixteenth-century cardinal Dominicus Jacobazzi repeated Isidore's etymology in the opening paragraph of his work *On the Council* (*De concilio*, 1512–23). In the eighteenth century, J. D. Mansi placed Jacobazzi's work at the head of his massive and long-authoritative compendium of conciliar texts. See J. D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, repr. edn., 54 vols. in 59 (Graz: Akademische Druck- u. Verlagsanstalt, 1960–61), vol. 0, Introductio, 1. In the same passage, Isidore associates *concilium* also with taking counsel (*consilium*) and sitting together (*considium*).

The scientific etymology of *concilium* also invites metaphorical interpretations. The word comes from an Indo-European root meaning "call," well preserved in the English word (cf. Lat. *calo*, *clamo*; Gk. *kaleō*). To meet in council is to be "called together" – a way of putting it that suggests a spiritual as well as a physical unity. A council is an affirmation of fellowship, an assembly of those who have heeded a common call – the call of the Gospel.

If conciliarism has a venerable history in the church, it has also played a prominent role in the recent past, thanks to the conciliar renaissance of the twentieth century. The renaissance followed one of the least conciliar seasons in church history – the early modern period running from the seventeenth century to the nineteenth century. This conciliar drought appears all the more surprising when one considers that it occurred during the time when the modern democratic idea was crafted. Itself a form of collaborative decision-making, democracy came to power in civil and political society in many parts of Christendom while conciliar practice languished in the church. After the Council of Trent (1545–63), the Roman Catholic Church held no general councils until Vatican I (1869–70), and that assembly, by accepting the doctrine of papal infallibility, made the status of councils in the Roman church more problematic than it had been before. The Russian Orthodox Church, the largest Orthodox church in the world and one of the few to escape domination by non-Orthodox rulers in early modern times, surrendered conciliar self-rule in 1721 to Tsar Peter the Great, who subordinated the government of the church to the imperial Russian monarchy. Conciliar government was restored after the collapse of the Russian Empire in 1917, only to be lost again as the new Soviet government began dismantling the Russian church. While Tsar Peter was suppressing conciliarism in Russia, the British Parliament was doing the same in England, suspending the Church of England's historical clerical councils, the Convocations of Canterbury and York, in 1717. The Convocations would not be reactivated as decision-making bodies until 1852.

A few Protestant churches did a better job of preserving conciliar structures than their catholic cousins in the early modern period. The presbyterian system and Methodist connectionalism are cases in point. But the scope of Protestant conciliarism was limited by the divisions within Protestantism. Hence Protestantism, while in some ways a responsible steward of conciliarism, lacked ample ecclesial space for its exercise, while the catholic traditions, which possessed the amplitude, allowed conciliarism to be eclipsed by dubious alternatives.