

# The Nature of Ministerial Authority in the Anglican Church in New Zealand

Noel Cox

## 1 Introduction

In New Zealand the legislative and judicial branches of church government of the Anglican Church depend for their authority, at least in part, upon legislation enacted by Parliament,<sup>1</sup> but the influence of secular law extends beyond this formal law.<sup>2</sup> Although in recent years there has been a conscious move away from the influence of the secular judiciary,<sup>3</sup> it remains to be seen whether this will be effective in distancing the Church tribunals from the influence of the common law. Its authority remains legislation based on secular statutes, and its procedures legalistic. Attempts to develop more theologically-based decision-making risks ‘correction’ by secular courts on judicial review.<sup>4</sup>

The legislature of the Church remains influenced by secular models, in this case the parliamentary model. More importantly, it has been profoundly influenced by the political history of New Zealand. The Treaty of Waitangi, which its implication of an on-going compact and partnership between Maori and Pakeha (Whites), has led to the Church adopting a divided legislature. This is not influenced primarily by theological considerations, but by social or political factors largely external to the Church itself. The legitimacy of the Church government—and therefore some of its authority—is derived from this social compact expressed in the Constitution of the Church.<sup>5</sup>

To continue to use the Montesquieuan model,<sup>6</sup> the executive branch of the Church, particularly the ministry, is less obviously influenced by secular concerns. Its authority has a more traditional basis—though the trustees and other lay office-holders are,<sup>7</sup> in some respects, subject to closer regulation by secular legislation.

With the significant exception of the ordination of women priests, the ministry remains fairly soundly based on the historical episcopal model, with three holy

orders of bishop, priest and deacon, and little affected by secular models. It is only occasionally, in their relation to their parishioners or to their ecclesiastical superiors, that the secular law has any significant impact upon the authority, responsibilities, or role of the ministry of the Church. This paper will consider each order in turn, and assess their authority and role, in relation to the sometimes conflicting secular and religious models. It will be shown that the law in respect of the executive branch of the Church—the ministry—is predominantly ecclesiastical. Whilst individual ministers, dignitaries, and office holders are subject to the secular laws, their authority is derived almost exclusively from ecclesiastical sources. These are sources which (unlike the judiciary and the legislature), have been subject to little secular influence, except in the ordination of women.

## **II Episcopal Ministry: the Office of Bishop**

Whilst the judicial aspects of the Church ecclesiology—including the effect of doctrine on judicial structures and processes—are important, they have not held the same pre-eminence as the ministerial in the life of the Church. The supreme law of the Church is the salvation of souls.<sup>8</sup> This requires the Church to deploy personnel, who are ordered and directed like an army. The priesthood, whether of bishops, priests, and deacons, or in some other form, has been central to church government, as well as to sacerdotal ministry.<sup>9</sup>

The three historic orders are bishop, priest, and deacon.<sup>10</sup> The term bishop<sup>11</sup> is used several times in the Septuagint version of the Old Testament. It would naturally suggest itself as a title for the offices to which the early Christians accorded their leadership. However the terms ‘priest’ and ‘bishop’ are used almost interchangeably in Acts 1:20,<sup>12</sup> Acts 20:17,<sup>13</sup> Acts 20:28,<sup>14</sup> and Titus 1:5-8.<sup>15</sup> By the end of the second century the monarchical episcopacy of apostolic origins<sup>16</sup> was generally recognised as the legitimate heir to special powers entrusted to the apostles by Christ.<sup>17</sup> Chief among these was the power to ordain priests and to teach and rule the clergy and laity of the diocese entrusted to them.<sup>18</sup>

The growing liberalism of much theological discourse, from the early nineteenth century in particular, added new theories about the origin and nature of the episcopacy.<sup>19</sup> Many theologians denied that Christ intended to found any organisation to perpetuate His teachings.<sup>20</sup> The church, therefore,

was not founded by Christ, but by the apostles or their successors, and the episcopal form of government is the fruit of a gradual evolution—and not the original form of the church as established by Christ.<sup>21</sup> This understanding of the formative centuries of the church saw the church as being composed of democratic groups, which naturally imitated the organisation of other contemporary societies as they grew, and which gave direction to the college of presbyters, of whom one became president.<sup>22</sup>

Criticism of episcopacy as the inherent leadership component of the church was not new in the nineteenth century, however. In the sixteenth century Calvin had condemned episcopacy as one of the worst corruptions which had crept into the church.<sup>23</sup> Though this theory was not new even then—Arius had espoused it as early as the fourth century<sup>24</sup>—the existence of the episcopacy was critical in the development of the church, at least until the Reformation.<sup>25</sup> Thereafter, whilst it did not survive in all Protestant churches, it has remained of great importance in the on-going ecumenical movement, particularly between the Anglican Communion and the Roman Catholic Church.<sup>26</sup> In both of these latter churches the office of bishop remained of fundamental importance.<sup>27</sup>

In seeking an acceptable ecumenical understanding and practice of episcopacy, the Tractarian understanding of apostolic succession has been largely superseded.<sup>28</sup> The absolute necessity of episcopacy in the apostolic succession, understood as the very essence of the church, has been reconsidered. An emphasis on a historically provable unbroken chain of episcopal succession finds less favour today than it once did.<sup>29</sup> Continuity here is guaranteed and expressed not by way of succession from generation to generation and from individual to individual, but in and through the convocation of the church of one place, that is, through its eucharistic structure. It is a continuity of communities and churches that constitutes and expresses apostolic succession in this approach.<sup>30</sup> This ensures continuity of authority.

The Anglican Communion, being composed of episcopal churches, did not reject the historic ministry of bishops, priests and deacons.<sup>31</sup> However, in spite of this, its relationship with the Roman Catholic Church has not been easy.<sup>32</sup> In 1896 Pope Leo XII solemnly declared all Anglican orders absolutely null and utterly void.<sup>33</sup> The reasons for that decision—and its implications—are beyond the scope of this paper,<sup>34</sup> but more recently the Anglican–Roman

Catholic International Commission (ARCIC) has explored the meaning of episcopacy in an effort to move beyond this condemnation.<sup>35</sup> The theological principle of collegiality attaches to bishops collectively, that by virtue of their historic and apostolic ministry they share a collective responsibility for leadership in the particular church.<sup>36</sup> On episcopal authority and synodical government the 1978 Lambeth Conference had this to say: ‘All authority comes from God and that which is given to the Church involves all the people of God in responsibility and obedience.’<sup>37</sup>

Neither bishop (nor synod) receives authority ‘by any succession independent of the Church’.<sup>38</sup> ‘The guardianship of the faith is a collegial responsibility of the episcopate.’<sup>39</sup> The authority of the bishop—and indeed the existence of his (or her) office—is primarily historical, and dependent upon the ancient custom of the Church. It bears little relation to secular equivalents. The scope of authority of a bishop is also primarily based upon doctrinal and liturgical texts.

A bishop has considerable powers, in particular the general powers of government.<sup>40</sup> He (or she) is also entitled to canonical obedience.<sup>41</sup> Within the Church a bishop has a governmental position incorporating both disciplinary and controlling elements. This has been ascribed jurisdictionally, in New Zealand, to the preamble of the Constitution, which refers to the ordering of the affairs, the management of the property, and the promotion of the discipline of the members of the Church.<sup>42</sup> Reference is also made in clause 1 of the Constitution to the *Book of Common Prayer* and the manner of the consecration of bishops.<sup>43</sup> The *Book of Common Prayer* (Consecration of Archbishops or Bishops) mentions 1 Timothy 3, that is, a chapter dealing with government. In the first verse there is a reference to the government of the church.<sup>44</sup> Furthermore, in the charge of the Archbishop (now the Primate) there is a reference to the admonition to government.<sup>45</sup>

As an apostolic church, the Anglican Church in New Zealand recognises the primary leadership role of the bishops.<sup>46</sup> They are also entrusted with a teaching role.<sup>47</sup> It is the function of a diocesan bishop to teach, sanctify, and govern his diocese.<sup>48</sup> A bishop must be at least thirty years of age,<sup>49</sup> and is generally much older upon appointment.<sup>50</sup> As elsewhere in the wider Anglican Communion, attempts are made to preserve the apostolic succession,<sup>51</sup> but the

understanding of the nature of the office is not necessarily the same as in the Roman Catholic Church<sup>52</sup>—nor, indeed, that of the Tractarians.<sup>53</sup>

While a bishop retains his or her personal episcopal status for life, they may relinquish office. The primate advises the other bishops of the resignation of a diocesan bishop.<sup>54</sup> On a vacancy, episcopal supervision devolves to the primate who appoints a commissary.<sup>55</sup> The terms of secular mental health law are used to determine incapacity,<sup>56</sup> but otherwise the Church itself regulates episcopal office. The diocesan Electoral College is presided over by the primate.<sup>57</sup> It determines its own procedure as to consultation, nominations, and decision-making.<sup>58</sup> There is provision for consultation throughout the diocese in question, and in particular, with the most local of ecclesiastical units within it (the parishes).<sup>59</sup>

The presiding bishop or archbishop takes responsibility for the consecration of the bishop-elect.<sup>60</sup> This requires three bishops including the primate<sup>61</sup> (or a commissary). Consecration is followed by enthronement or installation in the diocese.<sup>62</sup> The new bishop assents to the doctrine, liturgy, and discipline of the Church,<sup>63</sup> and undertakes to comply with the laws of the Church.<sup>64</sup> The bishop (or archbishop) is the chief minister in the diocese.<sup>65</sup> He (or she)<sup>66</sup> has his throne or *cathedra* in his cathedral church. He alone ordains priests, makes deacons, confirms the baptised, and consecrates land and buildings.<sup>67</sup> In accordance with tradition common to other episcopal churches, the appointment of many diocesan officers also lies in the hands of the bishop.<sup>68</sup>

The vicar-general acts whenever the bishop is outside the diocese or is incapacitated or resigns or dead.<sup>69</sup> His duties are to perform all the spiritual and temporal functions of the bishop, except as otherwise excluded by the law of the Church, and to summon and preside at the Diocesan Synod.<sup>70</sup> In contrast to England, where the chancellor acts as vicar-general,<sup>71</sup> in New Zealand the Vicar-General is in holy orders,<sup>72</sup> and is commonly an assistant bishop.<sup>73</sup>

Before the nexus with the Church of England in England was broken, and probably even now, bishops in Australia had no *ius liturgicum* and probably no power to assent to local customs and thus give them force of law.<sup>74</sup> The same is probably true in New Zealand. However, the bishops have the

principal leadership role within the Church. This is primarily dependent upon canon law—and the Church’s interpretation of historical authority—disputed by many Protestant churches.<sup>75</sup> There is little secular law which directly affects the episcopal office *per se*. However, as they have legal personality, the bishops may sue and be sued in secular courts, for they are corporations sole.<sup>76</sup>

Bishops in New Zealand derive their authority from a traditional apostolic understanding of episcopal ministry. The Constitution and canons have little to say about this authority.<sup>77</sup> Secular legislation and judgments are even less illuminating.<sup>78</sup> The High Court case of *Gregory v. Bishop of Waiapu*<sup>79</sup> offered an insight into the attitude of the secular courts to episcopal authority<sup>80</sup> but, for the Church, it appears that the bishop is central to the Constitution and ministry, and therefore there was little need to explain his role and responsibilities.<sup>81</sup>

The primate also has a major role—but one which is expressly described. General Synod elects the primate.<sup>82</sup> During a vacancy the primatial functions are assigned to a senior bishop.<sup>83</sup> The primate may be removed from office.<sup>84</sup> Generally, the primate is also bishop of their own diocese.<sup>85</sup> Since 1998 the position of archbishop of New Zealand has been discontinued, and the primate has been styled presiding bishop.<sup>86</sup>

As an episcopal church, the role of bishops, individually and collectively, is vitally important. Their historic role, however apostolic succession is understood, leaves little scope for secular authority to have a significant effect upon the ministerial government of the Church. The role of the bishop, their teaching and disciplinary authority, and most aspects of their appointment and retirement, are dependent solely upon the constitution and canons, and the tradition and custom of the Church.

### III The Ordained Ministry of Priests and Deacons

One of the formularies of the Church,<sup>87</sup> the *New Zealand Prayer Book*, observes that ‘[t]he provision of an ordained ministry, to serve the local congregation in the name of Christ and the universal Church is one of the responsibilities of the apostolic Church’.<sup>88</sup> However, in 1896 Pope Leo XII had declared all Anglican orders null and void.<sup>89</sup> The main objection was the alleged deficiency of intention and of form. In the case of deficiency of intention, the

pope believed that the Anglican rites of ordination revealed an intention to create a priesthood different from the ‘sacrificing’ priesthood of the Roman Catholic Church.<sup>90</sup> Yet the *Book of Common Prayer* contains a strong sacrificial theology, in particular in the Preface to the 1550, 1552, 1559, and 1662 versions of the Ordinal. These were not discussed in *Apostolicae Curae*.<sup>91</sup>

Whether or not the Roman Catholic Church recognises the Anglican orders—and this is a question yet to be finally resolved despite *Apostolicae Curae*<sup>92</sup>—the Anglican churches place considerable weight upon episcopal ordination.<sup>93</sup> In New Zealand this follows general Anglican Communion standards, with little or any direct secular influences apparent. Ordination requires vocation, trial, examination, and admission to Holy Orders.<sup>94</sup> Disqualifications are based on ecclesiastical status, spiritual and moral suitability, age, and mental or physical fitness.<sup>95</sup> The ancient distinction between irregularities and impediments has largely disappeared.<sup>96</sup> Few churches list criteria for valid ordination, but the following are generally accepted: the candidate must be baptised and confirmed,<sup>97</sup> and the bishop must be satisfied about the candidate’s spiritual and moral qualities.<sup>98</sup> There is a minimum age of 23 years for the diaconate and 24 years for the priesthood.<sup>99</sup> Diocesan synods of the dioceses in New Zealand, and the Diocesan Synod of the Diocese of Polynesia, each make regulations to govern the appointment and authorisation of ordained ministers within their own Tikanga.<sup>100</sup>

The candidate is subject to careful examination.<sup>101</sup> They must have ‘sufficient knowledge of holy Scripture and of the doctrine, discipline, and worship’ of the Church.<sup>102</sup> There are prescribed general educational qualifications.<sup>103</sup> Vocational training is conducted principally by St. John’s Theological College in Auckland.<sup>104</sup> Before proceeding to ordination the candidate must produce a birth certificate and testimonials.<sup>105</sup>

The rule of English canon law that no person shall be ordained both priest and deacon on one and the same day is followed.<sup>106</sup> Progression to priest is not automatic, and a candidate must be a deacon for at least a year, or ‘good cause’ must be shown.<sup>107</sup> The candidate must also provide a certificate that ecclesiastical office within the diocese is provided, from which ministry may be carried out.<sup>108</sup> If the candidate comes from another diocese, letters dimissory must be exhibited to the ordaining bishop from the bishop of the other

diocese.<sup>109</sup> An announcement must be made, in a congregation in which the candidate is known, of the forthcoming ordination, in order to receive evidence of support as well as an opportunity for people to make allegations that the candidate is impeded from ordination.<sup>110</sup> These rules are consistent with generally accepted practice elsewhere in the Anglican Communion. Self-regulation has not meant significant departure from common standards of practice. As in the rest of the Anglican Communion, this is based on consensus and voluntary adherence to traditional form rather than compliance with strict requirements of law.

In order to maintain discipline within the Church, where State-enforced penal sanctions are not available, ordinands are bound by oath to various undertakings. This may be seen in light of a historic tradition and practice. But it is also consistent with the secular legal view of the Church as governed by consensual compact<sup>111</sup>—where it is the voluntary membership of the church which alone imposes binding or mandatory obligations upon members.<sup>112</sup>

Prior to and at ordination, the candidate is obliged to make various undertakings, in the form of declarations, oaths or promises: assent to the doctrine of the church; to use only the lawful services of the church; obedience to the bishop; and compliance with the laws of the Church.<sup>113</sup> These undertakings are required to ensure some measure of orthodoxy, particularly important in the absence of an ecclesiastical law which is enforceable *per se* in courts able to effectively enforce their judgements.<sup>114</sup> As a voluntary association, the Church is competent ‘to constitute a tribunal...to decide questions arising out of this association’. Moreover, ‘[s]uch tribunals are not Courts, but their decisions will be binding if they have acted within the scope of their authority. They must also have either observed the prescribed procedure’, or, if there is none, ‘have proceeded in a manner consonant with the principles of justice, and the Civil Courts will enforce the decision if necessary’.<sup>115</sup> But this is only because of the inherent jurisdiction of the High Court,<sup>116</sup> and not because of the nature of ecclesiastical law.

In England, canon C15 (as amended) lay down the declaration of assent which every priest and deacon has to make, and it is in the following terms:

I, A B, do so affirm [loyalty to the inheritance of faith of the Church], and

accordingly declare my belief in the faith which is revealed in the Holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness; and in public prayer and administration of the sacraments, I will use only the forms of service which are authorized or allowed by Canon.<sup>117</sup>

In contrast to the form in England, the form of assent on ordination used in New Zealand includes specific declarations of allegiance to the supreme constitutional authority of the Church—the General Synod.<sup>118</sup> This is perhaps necessary because of the different constitutional position of the Church in New Zealand to that in England. The Church’s constitutional structure is not parallel to that of the State. Although the Church is a perfect society,<sup>119</sup> alongside the State, in the absence of full mutual recognition the former requires greater emphasis upon obligations based upon individual agreement and assent, for it to be fully effective. The form of the declaration of adherence and submission is:—

DECLARATION OF ADHERENCE AND SUBMISSION TO THE ANGLICAN CHURCH IN AOTEAROA, NEW ZEALAND AND POLYNESIA.

I, A. B. DO DECLARE my submission to the authority of the General Synod/te Hinota Whanui of this Church established by a Constitution agreed to on the 13th day of June 1857 and as subsequently revised and amended from time to time and to all the provisions of the Constitution from time to time in force to the extent that that authority and those provisions relate to the office of ...../membership of ..... and to any other office or membership I may at any time hold.

AND I further consent to be bound by all the regulations which may from time to time be issued by the authority of the General Synod/te Hinota Whanui in relation to any such office or membership so long as I hold it; AND I hereby undertake in consideration of my holding any such office or membership immediately to resign that office or membership together with all the rights and emoluments appertaining thereto whenever I shall be called upon so to do by the General Synod/te Hinota Whanui or by any person or persons lawfully acting under its authority in that behalf.

Given under my hand this.....day of.....in the presence of:<sup>120</sup>

This declaration does not include specific reference to the formularies, or to doctrine, and instead is limited to the Constitution and General Synod. This is what might be called a legalistic or jurisdictional form of declaration. In a constitutional arrangement based upon consent, doctrine may only be enforced if obedience to the authority and order of the Church is enforced. Though perhaps difficult ecclesologically, this is a logical arrangement in a church which is not legally established by the State. In contrast, the declaration of canonical obedience used in New Zealand, which is taken upon appointment to office, states:—

I, ....., being about to be licensed to the office of [name of office] given permission to officiate in [name of diocese or area] authorised for [such a ministry] DO SOLEMNLY MAKE THE FOLLOWING DECLARATION:—I believe in the faith, which is revealed in the Holy Scriptures and set forth in the Catholic Creeds, as this Church has received it and explained it in its Formularies and its authorised worship.

I assent to the Constitution of the Anglican Church in Aotearoa, New Zealand and Polynesia.

I affirm my allegiance to the doctrine to which clause 1 of the Fundamental Provisions and clauses 1 and 2 of Part B of that Constitution bear witness.

In public prayer and administration of the sacraments I will use only the forms of service which are authorised or allowed by lawful authority.

I will uphold the covenant and partnership expressed in the Constitution between Te Pihopatanga o Aotearoa as a whole and through its constituent parts, and the Dioceses in New Zealand together and severally and through their constituent parts, and the Diocese of Polynesia as a whole and through its constituent parts.

I will pay true and canonical obedience, in all things lawful and honest, to Te Pihopa o Aotearoa Te Pihopa ki te [name of Hui Amorangi] The Bishop of [name of Diocese] and to the successors to that Pihopa/Bishop, and will be obedient to the ecclesiastical laws and regulations in force in the said [Pihopatanga] [Hui Amorangi area] [name of Diocese].

The foregoing declaration was made and subscribed by the abovenamed on the day of in the year of our Lord—two thousand and –

Signed: – in the presence of:<sup>121</sup>

This is broadly equivalent to the English form. But it includes a further declaration of assent to the Constitution of the Church, as well as obedience to the bishop, ecclesiastical laws, and doctrine. It also contains a declaration of belief, and an undertaking to use only lawful forms of service. As the High Court had found in *Gregory v. Bishop of Waiapu*,<sup>122</sup> the effect of these declarations is to create a particular relationship between bishop and priest, and thereby reinforce the Church hierarchy.

Other aspects of ordination follow traditional Anglican practice. The service of ordination must take place on a day which the bishop appoints.<sup>123</sup> It takes place in the presence of the congregation.<sup>124</sup> The consent of the people generally is a pre-condition to ordination.<sup>125</sup> Valid ordination (according to liturgical norms) takes place by the consent of the candidate and by prayer and laying on of hands by the bishop:<sup>126</sup> ‘At least some of the priests present shall join with the bishop in the laying on of hands at the ordination of a priest.’<sup>127</sup>

It is believed that valid episcopal ordination confers the authority of the Church upon the ordained person.<sup>128</sup> Such a view is consistent with Roman Catholic teaching<sup>129</sup>—and that of the traditional churches in general (those which purport to be part of the universal Catholic Church).<sup>130</sup> However, in one significant particular the Anglican Communion, at least in some provinces, has departed from tradition—and thus apparently placed an additional obstacle in the path of church unity. This is the ordination of women as priests. Women were not unknown in clerical office—as deaconesses—but never as priests (and certainly not as bishops) until the twentieth century.<sup>131</sup>

The biblical origin of deaconesses is traditionally placed in Romans 16:1<sup>132</sup> and Titus 2:3.<sup>133</sup> They were recognised by the Councils of Nicaea (325) and Chalcedon (451).<sup>134</sup> The ordination of deaconesses resembled that of deacons, but conveyed no sacerdotal powers or authority.<sup>135</sup> The functions of the deaconesses were to assist at the baptism of women, to visit and minister to the needs of sick and afflicted women, to act as doorkeepers in church, and to conduct women to their seats.<sup>136</sup> The deacons, in contrast, might perform any sacred office except that of consecrating the elements and pronouncing absolution.<sup>137</sup>

The order of deaconesses was never particularly popular, and was condemned in the west by the Councils of Orange (441) and Epaene (517).<sup>138</sup> It fell into

abeyance in both east and west in the middle ages.<sup>139</sup> In modern times the order underwent a resurgence, due to changing needs, and changing perceptions of the role of women in society generally, and in the church particularly. In 1833 Lutheran Pastor Thomas Fliedner revived the order.<sup>140</sup> In 1862 Miss Elizabeth Ferard was ordained—by the Bishop of London—as a deaconess in the Church of England.<sup>141</sup> The order was recognised by the Lambeth Conference of 1897.<sup>142</sup>

Deaconesses were not female deacons, though Hong Kong had a women deacon—as distinct from deaconesses—in the mid-1940s. In exceptional wartime conditions, Bishop Ronald Hall ordained Florence Li Tim Oi for ministry in the Portuguese colony of Macau. This action was controversial,<sup>143</sup> and was condemned by the 1948 Lambeth Conference.<sup>144</sup> This resolution was strongly influenced by the Archbishop of Canterbury and Yorks' Commission on the Ministry of Women, *Women in the Anglican Communion* (1935),<sup>145</sup> though this had found no conclusive biblical authority either for or against the ordination of women. But the historic church had never recognised the ordination of women (except as deaconesses), and the Commission was unwilling to advocate a position which had hitherto not been advanced elsewhere in the wider church.

The ordination of women to the priesthood—with the sacerdotal authority which that implies—dates from more recent times. The ordination of women began in some Anglican provinces in the 1970s, with Hong Kong leading the way (appropriately enough perhaps) in 1971, followed by Canada 1976,<sup>146</sup> the United States of America 1977, and New Zealand in the same year.<sup>147</sup>

The change to the Constitution which allowed for the ordination of women within the province of New Zealand led to a hearing in the appeal tribunal. In November of 1977 this held that the ordination was not invalid.<sup>148</sup> The Tribunal held that the traditional formularies were not a legal obstacle to the ordination of women as priests.<sup>149</sup> The ordination of women priests was able to proceed.<sup>150</sup> The consecration of women bishops followed some years later. So far as the Province of New Zealand was concerned, the Church did have the authority to ordain women priests. It followed that these priests enjoyed the full authority of priesthood. Any women bishops would also enjoy full authority (including to ordain other priests, male and female). However this

matter cannot be regarded as settled in other provinces.<sup>151</sup>

The stated objections to the ordination of women as priests are based for the most part in ecclesiology rather than sacramental theology.<sup>152</sup> The theological objections may or may not be clear enough to stand permanently in its way. A 1988 declaration on the subject, signed by more than a hundred bishops from different parts of the Anglican Communion, states: 'We do not consider that the churches of the Anglican Communion have authority to change the historic tradition of the Church that the Christian ministerial priesthood is male.'<sup>153</sup>

According to this declaration, the ordination (or, for many opponents of women priests, purported ordination) of women will impair 'the wider unity of the Church'—that is, the developing ecumenical relations with Roman Catholic and Eastern Orthodox Churches, who have both expressed official concern at the ordination of women.<sup>154</sup> It would deprive Anglicans of the 'commonly accepted ministry' that is one of the few elements of cohesion in the midst of their prevailing diversity. It is not to be done without a 'clear ecumenical consensus'.<sup>155</sup>

Whether it is acceptable, ecumenically prudent, or indeed possible validly to ordain women as priests continues to be debated.<sup>156</sup> The general Anglican position may be summarised as follows. Scripture and tradition presents no fundamental objection to the ordination of women.<sup>157</sup> By itself, the witness of the New Testament does not permit a clear settlement of the question.<sup>158</sup> Tradition appears to be open to this development because the exclusion of women from the priestly ministry cannot be proved to be by 'divine law'.<sup>159</sup> Yet this position is not one which was reached without considerable uncertainty and perplexity,<sup>160</sup> not least in respect of the episcopal authority enjoyed by bishops consecrated by women bishops, or priests and deacons (and deaconesses) ordained by women bishops. After a fifty-year debate, the 1968 Lambeth Conference recognised that dissent would continue,<sup>161</sup> and although many provinces do now ordain women priests, their place in the Anglican Communion is still not settled.

The position of women priests and bishops in the Roman Catholic Church is clearer. The Pontifical Biblical Commission reviewed the attitude of the Roman Catholic Church to the ordination of women in 1976. In an internal report,

which was however leaked to the press, the commission concluded that, by itself, the New Testament did not provide a clear answer one way or the other.<sup>162</sup> The Congregation for the Doctrine of the Faith, in its 'Declaration on the Question of the Admission of Women to the Ministerial Priesthood' (*Inter insigniores*), came to a similar conclusion.<sup>163</sup> Thus biblical and sacramental theology did not prohibit the ordination of women.

However, Pope Paul VI, writing to Archbishop Coggan in 1975, reiterated that there were three very fundamental reasons why women could not be ordained as priests—the example recorded in the sacred Scriptures of Christ choosing his apostles only from among men; the constant practice of the church, which has imitated Christ in choosing only men; and [the Roman Catholic Church's] living teaching authority which has consistently held that the exclusion of women from the priesthood is in accordance with God's plan for his church.<sup>164</sup> The 1994 apostolic letter on priestly ordination, *Ordinatio sacerdotalis*, repeated the Roman Catholic view.<sup>165</sup>

Although the two communions may have reviewed the same evidence, they come to quite different conclusions. Principally, this may be seen to have depended upon the differing perspectives of the respective churches. The Anglican and the Roman Catholic views of tradition were markedly different. It might even be said that one allowed that which was not expressly prohibited, the other allowed only that which was expressly allowed.<sup>166</sup> One fostered diversity, the other enjoined conformity.<sup>167</sup> Another view would be that one required compliance, the other merely hoped for adherence.

The authority of Anglican bishops and priests in general was challenged by the Roman Catholic Church as they were not being validly ordained and consecrated—though not necessarily regarding them as laymen for all purposes—while the advent of women priests has caused dissent within the Anglican Communion itself. Whilst the Constitution of the Church gives the Anglican Church in New Zealand legal authority to ordain women priests and deacons, and to consecrate women bishops, it is clear that this is not acceptable to all the elements of the Christian church as a whole, and was unequivocally unacceptable to the Roman Catholic Church and to the orthodox churches. Therefore, whilst the internal authority of the Church so to act may appear clear, it is actually far from being so.

If the claims of the Anglican Church in New Zealand to being part of the universal church are to mean anything, then it must be allowed that internal laws alone do not suffice to authorise significant changes to the doctrine or ecclesiology of the Church. The Anglican Communion, or the Christian church as a whole (perhaps in General Council), may have to determine that these changes are allowable. Anglican ecclesiology recognises that General Councils may pronounce doctrine,<sup>168</sup> but is sceptical of the infallibility of any institution or council.<sup>169</sup>

The origins of these differing views of the same evidence can be traced, in part, to differing views of authority with the church. The reformed churches may also be more clearly influenced by notions of equal rights and equal opportunities than the Roman Catholic Church, with its stronger tradition. There is perhaps less division of opinion on the role and function of a minister, once ordained—though even here the traditional Roman Catholic perception of the sacerdotal function of the priest must be contrasted with differing perceptions in some of the later churches.<sup>170</sup>

Once appointed, a priest or deacon has certain set responsibilities. The incumbent must, either himself or by his assistants, provide his parishioners with the occasional offices of the church (for example, baptism, marriage, and burial) and perform divine service on Sundays and holy days.<sup>171</sup>

The *Book of Common Prayer* also lays down positive injunctions upon clergy. The rubric requires that all priests and deacons say Morning and Evening Prayers daily, if not publicly then privately. The Ordinal required the bishop to address the ordinands thus: ‘Ye ought to forsake and set aside (as much as you may) all worldly cares and studies. We have good hope...that you have clearly determined...to give yourselves wholly to this office...so that, as much as lieth in you, you will apply yourselves wholly to this one thing, and draw all your cares and studies this way....’<sup>172</sup>

Canon 75 of the Canons of 1604 enacted that no ‘ecclesiastical person’ (which in this context probably means a clergyman) shall resort ‘to any taverns or alehouses’ nor board or lodge in them ‘other than for their honest necessities.’<sup>173</sup> Furthermore, they shall not give themselves to any base or servile labour.<sup>174</sup> Canon 76 forbade anyone ‘admitted as Deacon or Minister’ to ‘use

himself in the course of his life as a laymen, upon pain of excommunication'.<sup>175</sup> The canons made an exception of teaching.<sup>176</sup> These private regulations were not mirrored in State laws—which do not generally distinguish between clerical and lay status.<sup>177</sup> Since the adoption of the Constitution and canons of the Anglican Church in New Zealand in the nineteenth century, these specific provisions have not been in force in New Zealand but the canons do preserve some of the rules.

Within the Church, the deployment of ministers depends upon local rules. Churches either employ a system of episcopal licensing exclusively or in addition to appointment by presentation and institution. In the Church of Aotearoa, New Zealand and Polynesia, appointment is not treated by national or provincial law, but rather by diocesan law.<sup>178</sup> Informal written permission to minister may also be given.<sup>179</sup> Consistent with general theory and practice, clergymen are regarded in ecclesiastical and secular law alike as office-holders, not employees.<sup>180</sup>

Priests are 'called to build up Christ's Congregation', to strengthen the baptised and to lead them as witnesses to Christ in the world.<sup>181</sup> Generally, it is their duty to preach the gospel, particularly through sermons, and to minister the sacraments and to perform other offices and rites as are authorised by the Church.<sup>182</sup> It is also their duty to visit the members of the congregation, especially when they are sick, and to provide opportunities for them to consult him (or her) for spiritual counsel and advice.<sup>183</sup> They must prepare candidates for baptism, confirmation, and reception, and, with respect to confirmation and reception, when satisfied of their fitness, to present them to the bishop.<sup>184</sup>

Ministers must not officiate or otherwise minister in another diocese without the host bishop's permission,<sup>185</sup> nor in another parish or pastorate in their own diocese without the host minister's permission.<sup>186</sup> They must obey the directions of their bishop.<sup>187</sup> These rules are, of course, to ensure discipline and the orderly use of resources. The formularies have little impact upon the authority of the ministry except insofar as only validly ordained ministers may lawfully administer the sacraments of the Church.

One aspect of the minister's role differs in New Zealand from that in England. That is because the Church in New Zealand is not a State Church, ministering

to everyone in the country who wishes to avail themselves of its services. In England, everyone living in the parish is a parishioner regardless of his or her religious persuasion. A parishioner, whether or not on the electoral roll of the parish council, and whether or not a member of the Church of England, has certain obligations and rights.<sup>188</sup> The obligations, to attend church and to communicate, are unenforced.<sup>189</sup> But the rights or privileges remain.<sup>190</sup> A parishioner has a right to entry to the parish church at the time of public worship, so long as there is room for him, standing or sitting.<sup>191</sup> He or she has a right to a seat if there is one available, but not a right to any particular seat (unless one has been given him by faculty).<sup>192</sup> He has a right to the burial of his body in the burial ground of the parish, regardless of his religion—though not to the burial service if unbaptised.<sup>193</sup> In general, he has a right to be married in the parish church, at any rate if one of the parties to the marriage has been baptised.<sup>194</sup> This is subject however to various qualifications, including that neither party is a divorcee.<sup>195</sup> Whatever his religion, as a parishioner he has a right to the ministrations of the church, so far as they are appropriate to his condition.<sup>196</sup>

It might be questioned whether this is also true in New Zealand, given the different constitutional place held by the Church. However, the mission of the Church includes ‘proclaiming the Gospel of Jesus Christ’; teaching, baptising and nurturing believers within eucharistic communities; and responding to human needs by loving service.<sup>197</sup> These would apparently suggest that even non-members of the Church, desirous of the ministrations of the Church, may have a right to its services. This is a matter in which the relationship of Church and State is important. For if the Church has responsibility to non-members, then it might expect recompense from the State.<sup>198</sup> This relates to the establishment of the Church, rather than to the authority of its ministers—though as a consequence of non-establishment (or quasi-establishment), Church ministers do not have the benefit of formal recognition by the secular authorities, and their ministrations are consequently not State-funded.

The diaconal ministry is treated only in liturgical books.<sup>199</sup> Their role is to proclaim the Word of God; serve the presbyter; care for the poor and sick; and to baptise when requested.<sup>200</sup> This supporting role is common to the major episcopal churches,<sup>201</sup> and is but little affected by issues of authority.

There is a general duty on clergy to comply with the laws of the Church, and a particular duty to obey the lawful directions of bishops.<sup>202</sup> They undertake to submit to the rule of the Church.<sup>203</sup> There is a duty to undertake to submit to the authority of ecclesiastical authorities.<sup>204</sup> A specific promise of canonical obedience is given.<sup>205</sup> Obedience to the bishop is not only specifically required,<sup>206</sup> but also the ‘guidance and leadership of [the] bishop’.<sup>207</sup> Failure to adhere to these requirements may result in deprivation of office, though this can also occur at will in certain situations.<sup>208</sup> The secular courts will enforce internal Church decisions with respect to offices, but strictly only as a matter of private contractual interpretation.<sup>209</sup>

An ecclesiastical office is lost on the expiry of a predetermined time; on reaching the age limit defined by law; by resignation; by transfer; by removal; or by deprivation,<sup>210</sup> all of which are subject to employment law—and the Human Rights Act insofar as it is applicable.<sup>211</sup> Upon relinquishment and reinstatement re-ordination is neither required nor possible.<sup>212</sup> Canon 76, as well as forbidding priests and deacons from using themselves as laymen, also provided that they shall not relinquish their orders.<sup>213</sup> The orders are indelible,<sup>214</sup> so if a clergyman does relinquish his orders<sup>215</sup> he does not cease to be an ordained man (or woman).<sup>216</sup> He may therefore resume his status without further ordination.<sup>217</sup> In these provisions the Church does not generally depart from Anglican Communion—or Roman Catholic<sup>218</sup>—norms. Nor is it affected or unduly influenced by secular legal norms or rules.

#### IV Conclusions

The authority of Ministerial office in the Church has been little affected by secular influences. The principal influence has been the continuing structure of the historic church. There has been some influence from secular beliefs in respect of the ordination of women, influenced as it is by feminism and a belief in equality, rather than by narrowly ecclesiological considerations. But generally authority is that imposed by declaration and assent to the constitution and canons, themselves based upon the law of the universal church.

The status of clergy depends upon the constitution or rules of the organisation by which they are engaged and the terms of their appointment.<sup>219</sup> Clergymen are office-holders, not employees,<sup>220</sup> and they cannot be deprived of office except by due process.<sup>221</sup> These principles are established in both religious as

well as secular laws.<sup>222</sup>

As an episcopally-led church, the Anglican Church in Aotearoa, New Zealand and Polynesia emphasises the role of the bishops as teachers and leaders. This is consistent with the Church's claim to be apostolic and an inheritor of the Catholic tradition. Yet social and political changes have led to a decline in the relative role of the bishop—in particular their comparative proliferation since 1992,<sup>223</sup> and the loss of the archbishop.<sup>224</sup> The position of the episcopacy remains, however, central to authority in the Church, both for its teaching and its leadership role. In this respect, secular legal notions have had little effect upon the Church.

Dr. NOEL COX holds the Discipline Chair, Law, Faculty of Business, University of Technology, Auckland, New Zealand.

#### ENDNOTES

1. Private, rather than public, Acts of Parliament.
2. See, e.g., Noel Cox, "Ecclesiastical Jurisdiction in the Church of the Province of Aotearoa, New Zealand and Polynesia," (2001), 6(2) *Deakin Law Review*: 266-84.
3. Compare, for instance, *Ecclesiastical Jurisdiction Measure 1963* (UK) and the Constitution of the Anglican Church in Aotearoa, New Zealand and Polynesia, and the Canons made thereunder (as revised).
4. See, e.g., J. Burrows, "Judicial Review and the Church of England," (1997) University of Wales Cardiff LLM dissertation.
5. Const. Preamble. This 'implied partnership and bicultural development' has been recognised only since the late twentieth century, particularly by the Church and the courts.
6. See Charles de Secondat Baron de Montesquieu, "The Spirit of the Laws," in Arend Lijphart (ed.), *Parliamentary versus Presidential Government* (Oxford, 1992), pp. 48-51.
7. These are beyond the scope of this paper, because they are primarily secular in nature.
8. See *The Code of Canon Law: in English Translation prepared by the Canon Law Society of Great Britain and Ireland* (London, 1983), Canon 1752.
9. See Kenneth Kirk (ed.), *The Apostolic Ministry* 2nd ed., (London, 1957). Congregational churches, however, give a lesser role to the ministry, as indeed do the Presbyterian churches.

10. Title G canon XIII.1.1; *A New Zealand Prayer Book* (Wellington, 1989), p. 887.
11. *Episkopos* (overseer).
12. 'For it is written in the book of Psalms, Let his habitation be desolate, and let no man dwell therein: and his bishoprick let another take' (this and later quotations are King James Version of the Bible). This is rendered differently in other translations, so that the 'bishopric' becomes 'leadership' or some equivalent term.
13. 'And from Miletus he sent to Ephesus, and called the elders of the church'.
14. 'Take heed therefore unto yourselves, and to all the flock, over the which the Holy Ghost hath made you overseers, to feed the church of God, which he hath purchased with his own blood'.
15. 'For this cause left I thee in Crete, that thou shouldest set in order the things that are wanting, and ordain elders in every city, as I had appointed thee: If any be blameless, the husband of one wife, having faithful children not accused of riot or unruly. For a bishop must be blameless, as the steward of God; not selfwilled, not soon angry, not given to wine, no striker, not given to filthy lucre; But a lover of hospitality, a lover of good men, sober, just, holy, temperate.'
16. At least as the episcopate is generally understood in the apostolic tradition; James Coriden, *An Introduction to Canon Law* (New York, 1991), p. 14; Kirk (ed.), *The Apostolic Ministry*.
17. Dom Gregory Dix, "The Ministry in the Early Church," in Kirk (ed.), *The Apostolic Ministry* 2nd ed. (London, 1957), pp. 201-2.
18. The charges to preach and teach were presented clearly and forcefully in the pastoral epistles; 1 Timothy 4; 2 Timothy 4.
19. See Kenneth Kirk (ed.), *The Apostolic Ministry*.
20. Particularly in the reformed and protestant churches.
21. For a view of this period, see Dix, "The Ministry in the Early Church," pp. 183-304.
22. The varying understanding of these early years has also influenced the formation and structure of 'schismatic or non-conforming' denominations, as episcopal (authority lodged with bishops), prebyteral (elders), or congregational (members of local congregations); Kirk, *The Apostolic Ministry*.
23. Jean Calvin, *Institutes of the Christian Religion* John McNeill (ed), trans. by Ford Lewis Battles (London, 1960).
24. Richard Hooker, *Of the Laws of Ecclesiastical Polity* ed. by Arthur McGrade (Cambridge, 1989), Book VII.
25. Kirk, *The Apostolic Ministry*.
26. See R. W. Franklin (ed.), *Anglican Orders* (Harrisburg, 1996).
27. E.g., "The Code of Canon Law: in English Translation prepared by the Canon Law Society of Great Britain and Ireland," (London ,1983), Canon 204 §2: 'This Church, established and ordered in this world as a society, subsists in the catholic

Church, governed by the successor of Peter and the Bishops in communion with him’.

28. Christopher Hill, “Bishops: Anglican and Catholic,” in Norman Doe, Mark Hill and Robert Ombres (eds.), *English Canon Law* (Cardiff, 1998), pp. 60-70.
29. Compare Kirk, *The Apostolic Ministry* and J. D. Zizioulas (ed.), *Studies in Personhood and the Church* (1985).
30. Zizioulas, *Studies in Personhood*, p. 177.
31. ‘It is evident unto all men diligently reading holy Scripture and ancient Authors, that from the Apostles’ time there have been these Orders of Ministers in Christ’s Church; Bishops, Priests, and Deacons’—“Preface to the Ordinal in the Book of Common Prayer,” (London, 1662); *A New Zealand Prayer Book* (Wellington, 1989), p. 887.
32. Although the Bull of Pope Leo XIII *Apostolicae Curae* constitutes the final papal condemnation of the validity of Anglican Orders, it was by no means the first. In 1555, Pope Paul IV issued a Bull entitled *Praeclara Charissimi* which clarified the powers given to Cardinal Pole, sent to England to regularize the religious position after Queen Mary came to the throne; Michael Davies, *The Order of Melchisedech* (Kansas City, 1979), pp. 154-5. Later in the same year, the pope clarified the matter still further by writing: We declare that it is only those Bishops and Archbishops who were not ordained and consecrated in the form of the Church that can not be said to be duly and rightly ordained and therefore the person promoted by them to these orders have not received orders but ought and are bound to receive anew these said orders from the ordinary.’ (Davies, *The Order of Melchisedech*, p. 157.)
33. Pope Leo XIII, Letters Apostolic of His Holiness Leo XIII...concerning Anglican Orders dated: September 13, 1896 (London, 1896).
34. See R. W. Franklin (ed.), *Anglican Orders* (London, 1996).
35. Christopher Hill, “Anglican Orders: An ecumenical Context,” in R. W. Franklin (ed.), *Anglican Orders* (London, 1996), p. 87.
36. LC 1968, Res. 55; LC 1978, Res. 13; LC 1988, Res. 8 [‘LC’ hereafter refers to the Lambeth Conferences]. This is because of biblical warrant, for example, John 21:15-17: ‘So when they had dined, Jesus saith to Simon Peter, Simon, son of Jonas, lovest thou me more than these? He saith unto him, Yea, Lord; thou knowest that I love thee. He saith unto him, Feed my lambs. He saith to him again the second time, Simon, son of Jonas, lovest thou me? He saith unto him, Yea, Lord; thou knowest that I love thee. He saith unto him, Feed my sheep. He saith unto him the third time, Simon, son of Jonas, lovest thou me? Peter was grieved because he said unto him the third time, Lovest thou me? And he said unto him, Lord, thou knowest all things; thou knowest that I love thee. Jesus saith unto him, Feed my sheep.’ Luke 22:32: ‘But I have prayed for thee, that thy faith fail not: and when thou art converted, strengthen thy brethren.’ It reflects the nature of the universal church as

a communion of churches, or *communio ecclesiarum*.

37. “The People of God and Ministry,” LC 1978, pp. 76-7.
38. “The People of God and Ministry,” LC 1978, pp. 76-7.
39. “The People of God and Ministry,” LC, 1978, pp. 76-7.
40. *Gregory v. Bishop of Waiapu* [1975] N.Z.L.R. 705, 712 per Beattie J: ‘In essence therefore, a bishop has considerable powers, being the general powers of government. He is also entitled to canonical obedience. These aspects of his high office regulate his relationship with the clergy.’
41. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 709 per Beattie J. This was because of the declaration of canonical obedience, but also because of the constitutional position of the bishop within the body of the Church: ‘each priest completes this document [the declaration of canonical obedience] on his appointment, and in my opinion such a promise and declaration creates a particular relationship between a bishop and his priests.’ The bishop also owes obedience to his canonical superiors.
42. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 708-709 per Beattie J.
43. The 1662 version of which is one of the Formularies of the Church; Const. B1.
44. ‘This is a true saying, if a man desire the office of a bishop, he desireth a good work.’
45. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 708-709 per Beattie J.
46. Title C canon I.1; *A New Zealand Prayer Book* (Wellington, 1989), p. 913: ‘Bishops are to exercise godly leadership in that part of the Church committed to their care’.
47. *A New Zealand Prayer Book*, p. 913: ‘Bishops are sent to lead by their example in the total ministry and mission of the Church.’
48. Title D canons I.A, II.
49. Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons; cf. Act of Uniformity 1662 (14 Chas II c 4) (Eng).
50. However, the Bishop (or Te Pihopa) of Te Tai Tokerau (the Northern Region), the Rt. Revd. Tai Kitohi Wiremu Pikaahu, was only 37 years old when consecrated in 2002; Newsnet, Anglican Diocese of Wellington (February, 2002), available at <[http://www.wn.anglican.org.nz/news\\_centre/NewsNet/NewsnetFebruary2002.pd](http://www.wn.anglican.org.nz/news_centre/NewsNet/NewsnetFebruary2002.pd)> at 6 May, 2003.
51. Title G canon XIII.1.1. Title D canons, interpretation: “‘Bishop’ shall mean persons who are ordained according to the Ordination Liturgy of Bishops in the New Zealand Prayer Book/He Karakia Mihinare o Aotearoa or consecrated according to the Form and Manner of Consecrating Bishops in the *Book of Common Prayer* 1662, or the 1980 Ordinal, or persons who have been ordained or consecrated Bishop in other Provinces of the Anglican Communion and who are exercising episcopal ministry within this Church.’
52. R. W. Franklin (ed.), *Anglican Orders* (London, 1996).

53. Christopher Hill, "Bishops: Anglican and Catholic," in Norman Doe, Mark Hill and Robert Ombres (eds.), *English Canon Law* (Cardiff, 1998), pp. 60-70.
54. Title A canon I.6.2.
55. Title A canon I.2.5.
56. Title A canon I.6.5. If the diocesan standing committee has 'cause to believe' that there is incapacity, the primate must put the written opinion of three medical practitioners to all the bishops and if they are of the same opinion the diocese is declared vacant.
57. Title A canon I.2.5.
58. Title A canon I.2.8.
59. The Diocesan Electoral College may delegate its right to nominate to any person or persons whom it may appoint either absolutely or subject to such conditions as it may think fit to impose; Title A canon I.2.10. This delegation must, however, be reported to the Primate.
60. Title A canon I.5.10.
61. Title G canon XIII.2.1.
62. In accordance with 'the Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons'.
63. Title A canon I.5.6.9.
64. Title A canon I schedule.
65. Title D canon II.1.
66. Dr. Penelope Jamieson was elected 11 November, 1989 and consecrated 29 June 1990 Bishop of Dunedin. Pam Darling, *'Equally Applicable' Conscience and Women's Ordination in the Episcopal Church, USA, 1976-1994* (New Era, 1994).
67. Generally, only in accordance with the formularies of the Church.
68. Title A canon II.1.9.
69. The bishop 'may' appoint a vicar-general; Title A canon I.8.
70. Title A canon I.8.
71. T. Coningsby, "Chancellor, Vicar-General and Official Principal—a bundle of offices," (1992) 2(10) *Ecclesiastical Law Journal*: 273.
72. Canon A.1.8.
73. Assistant bishops, as in England, are usually retired diocesan or suffragan bishops who continue to exercise episcopal responsibilities within the diocese.
74. Standing Committee of the General Synod of the Church of England in Australia, *The Anglican Church of Australia, Canon Law in Australia* (Sydney c.1981), p. 50. See *Wylde v. Attorney-General* (1949) 78 C.L.R. 224 (HCA).
75. See, e.g., Kirk, *The Apostolic Ministry*.
76. As in *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705.
77. See, for example, Constn. A.5.
78. There have been few reported cases in secular courts in New Zealand which have

dealt with ecclesiastical laws, however broadly defined.

79. [1975] 1 N.Z.L.R. 705.
80. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 709 per Beattie J: ‘each priest completes this document [the declaration of canonical obedience] on his appointment, and in my opinion such a promise and declaration creates a particular relationship between a bishop and his priests.’ His Honour also observed that ‘The Church structure contemplates a hierarchy and as far as ministers are concerned, that hierarchy consists of bishops, priests and deacons. A bishop has a governmental position incorporating both disciplinary and controlling elements. The constitution in its preamble refers to the ordering of the affairs, the management of the property, and the promotion of the discipline of the members thereof. Reference is also made in cl. 1 of the constitution to the *Book of Common Prayer* and the form and manner of the consecration of bishops. *The Book of Common Prayer* (Consecration of Archbishops or Bishops) mentions 1 Timothy 3:1, that is, a chapter dealing with government and in the first prayer of that form there is a reference to the government of the Church. Furthermore, in the charge of the Archbishop to a bishop there is a reference to the admonition to government’.
81. Whether this is reasonable is perhaps doubtful—but it would appear to be pragmatic.
82. The title ‘Presiding Bishop’ shall be the ‘courtesy title’ of the primate; Canon A.1.7.8; Until 1998 the canons provided that the style should be ‘Archbishop’. The primate ‘shall have and may exercise all the powers functions and authorities given ....under the Constitution and Canons’; Canon A.1.7.7.
83. Const. C.13.
84. Const. A.1.7.5.
85. The current primate is Bishop of Auckland, and so is styled ‘Right Reverend’. Although in earlier years diocesan bishops were known as ‘Lord Bishop’, this usage has gone out of favour.
86. Title A canon I.7.8.
87. That is, collections of prescribed forms and liturgies.
88. *A New Zealand Prayer Book* (Wellington, 1989), p. 887.
89. Pope Leo XIII, Letters Apostolic of His Holiness Leo XIII...concerning Anglican Orders dated: September 13, 1896 (London 1896). Nullity and voidness are distinct legal concepts, though usually conjoined.
90. Rt. Revd. Hugh Montefiore, “Forward” in R. W. Franklin (ed.), *Anglican Orders* (London 1996), p. 4.
91. See “*Saepius Officio*,” in R. W. Franklin (ed.), *Anglican Orders* (London, 1996), pp. 138-49.
92. See R. W. Franklin (ed.), *Anglican Orders* (London, 1996).
93. Valid ordination (according to liturgical norms) takes place by the consent of the

candidate and by prayer and laying on of hands by the bishop; *The Book of Common Prayer* (London 1662), pp. 553ff, from 1 Timothy 4:14: 'Neglect not the gift that is in thee, which was given thee by prophecy, with the laying on of the hands of the presbytery.'

94. Title G canon XIII.1.1.
95. Title F canon XIII.3-7.
96. Norman Doe, *Canon Law in the Anglican Communion* (Oxford, 1998), p. 129. It is not found in New Zealand; see the wording of Title F canon XIII.3-7.
97. For New Zealand, see Title G canon XIII.4.1.
98. For New Zealand, see Title G canon XIII.4.2.
99. Title G canon XIII.3.23.2 (deacons). Effect of Title G canon XIII.3.2 and Title G canon XIII.3.4 (priests).
100. Const. D.1, E.1, F.1; Title A canon II.1.
101. Title G canon XIII.5.
102. Title G canon XIII.5.
103. General Synod Standing Resolutions 1986. These include a requirement that the candidate must have competence in the Maori language.
104. Title E canons II – V operate alongside the St. John's College Trusts Act, 1972 (NZ). In accordance with the three-way division of the Church, the College has three constituent colleges, the College of the Southern Cross, Te Rau Kahikatea, and the College of the Diocese of Polynesia. Ordination training is also conducted through the Christchurch-based College House Institute of Theology, the Dunedin-based Selwyn College, and Distance Education Formation and Training Unit.
105. Title G canon XIII.4.1.
106. '[N]o person shall be made a deacon and a presbyter on the same day'; Title G canon XIII.3.3.
107. Title G canon XIII.5.
108. No bishop shall ordain 'unless satisfied such person shall be licensed to an office under the Canons'; Title G canon XIII.3.5.
109. Title G canon XIII.3.5.
110. A certificate must be sent to the bishop; Title G canon XIII.4.3.
111. As in *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705.
112. Though *Scandrett v. Dowling* [1992] 27 N.S.W.L.R. 483 (NSW) would appear to support the proposition that church members are associated only on the basis of a shared faith without legal sanction for its enforcement; Mr. Justice Bruce McPherson, "The Church as consensual compact, trust and corporation," (2000) 74 *Australian Law Journal*: 159, 171.
113. *A New Zealand Prayer Book* (Wellington 1989), p. 922.
114. Noel Cox, "Ecclesiastical Jurisdiction in the Church of the Province of Aotearoa, New Zealand and Polynesia," (2001) 6(2) *Deakin Law Review*: 266-84.

115. *Baldwin v. Pascoe* (1889) 7 N.Z.L.R. 759, citing *Long v. Lord Bishop of Cape Town* (1863) 1 Moo. N.S. 411 (PC).
116. The High Court has ‘all judicial jurisdiction which may be necessary to administer the laws of New Zealand’; Judicature Act 1908 (NZ), s 16. This is also recognised by the Church of England Empowering Act 1928 (NZ), s 7: ‘Nothing in this Act contained shall annul, limit, or abridge the inherent power of the [High Court] to prohibit anything purporting to be done under this Act on the ground that it is not a *bona fide* exercise of the powers conferred by this Act.’ (The reference to the High Court was substituted, as from 1 April 1980, for a reference to the Supreme Court pursuant to s 12 Judicature Amendment Act 1979). *Taylor v. Attorney-General* [1975] 2 N.Z.L.R. 675, 682 per Richmond J adopted this description of the inherent jurisdiction by Master Jacob, “The Inherent Jurisdiction of the Court,” (1970) *Current Legal Problems* 27, 28: ‘The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law. The juridical basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.’ (CA).
117. *The Canons of the Church of England*. Canons ecclesiastical promulgated by the Convocations of Canterbury and York in 1964 and 1969 (London, 1969).
118. General Councils are acknowledged by the Anglican Communion to have authority, but there has not been a generally accepted Council for many centuries. There is no Communion-wide legislative body; The Act of Uniformity 1559 (1 Eliz I c 2) (Eng), which enshrined the Elizabethan Settlement, endorsed the first four ecumenical councils—Nicaea 325, Constantinople 381, Ephesus 431, and Chalcedon 451 as the authorities by which heresy would be defined; Stephen Platten, *Augustine’s Legacy* (London, 1997), p. 29.
119. The church was regarded as a perfect society (*societas perfecta*), but so was the State. Each contained in itself all that its nature requires and all that is needed for the full discharge of its functions. It is not dependent upon any other earthly entity; Hubert Box, *The Principles of Canon Law* (London, 1949), p. 8. There could be no conflict between Church and State as each occupied a distinct field—though they were always mutually aware of one another.
120. Const. C.15.
121. Title A canon II.3 (declaration of assent, adherence and submission to the General Synod/te Hinota Whānui). In *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 709 per Beattie J the Supreme Court (now High Court) held that ‘each priest completes this document on his appointment, and in my opinion such a promise and declaration creates a particular relationship between a bishop and his priests’.
122. [1975] 1 N.Z.L.R. 705.
123. *A New Zealand Prayer Book* (Wellington, 1989), p. 922.

124. Title G canon XIII.3.1.
125. 'The assent of the people that the candidate should be ordained is an integral part of the service'; *A New Zealand Prayer Book* (Wellington, 1989), p. 887.
126. *The Book of Common Prayer* (London, 1662), pp. 553 ff, from 1 Timothy 4:14: 'Neglect not the gift that is in thee, which was given thee by prophecy, with the laying on of the hands of the presbytery.'
127. *A New Zealand Prayer Book* (Wellington, 1989), p. 923.
128. *The Book of Common Prayer* (London, 1662).
129. Leo XIII, *Letters Apostolic of His Holiness Leo XIII...concerning Anglican Orders dated: September 13, 1896* (London, 1896).
130. See, e. g., Kirk, *The Apostolic Ministry*.
131. Sara Butler, "The ordination of women: A new obstacle to the recognition of Anglican orders," in R. W. Franklin (ed.), *Anglican Orders* (London, 1996), pp. 96-113. For the English position, see David McLean, "Women priests—the legal background," (1989) 1(5) *Ecclesiastical Law Journal*: 15.
132. 'I commend unto you Phebe our sister, which is a servant of the church which is at Cenchrea.'
133. 'The aged women likewise, that they be in behaviour as becometh holiness, not false accusers, not given to much wine, teachers of good things.'
134. Council of Nicea, canon 19 in *Corpus Iuris Canonici. Decretum*, Pars III, *De Cone.* Dist. III c. x; Council of Chalcedon, canon 15, in *Corpus Iuris Canonici, Gratian's Decretum*, Pars II, Causa XXVII, Quaest. I, Canon xxiii.
135. Cecilia Robinson, *The Ministry of Deaconesses* (2nd ed, 1914), pp. 219-229.
136. Vincent Emmanuel Hannon, *The Question of Women and the Priesthood* (London, 1967), pp. 71-96.
137. As described in the ordination service of *The Book of Common Prayer* (London, 1662) and *A New Zealand Prayer Book* (Wellington, 1989).
138. Canons 26-28, in Carl Joseph von Hefele, *History of the Christian Councils* trans. and ed. by H. N. Oxenham (Edinburgh, 1871-96), vol III, pp. 163-4; and canon 21, in Mary McKenna, *Women of the Church* (New York, 1967), p. 131.
139. Hannon, *The Question of Women and the Priesthood* pp. 71-96.
140. Cecilia Robinson, *The Ministry of Deaconesses*.
141. Cecilia Robinson, *The Ministry of Deaconesses*.
142. LC 1897, Res. 11.
143. Mrs. Oi voluntarily ceased to exercise her ministry in 1946.
144. LC 1948, Res. 115.
145. Archbishop of Canterbury and Yorks' Commission on the Ministry of Women, *Women in the Anglican Communion* (London, 1935).
146. W. J. Hemmerick, "The ordination of Women: Canada," (1991) 2 *Ecclesiastical Law Journal*: 177.

147. Perry Butler, "From Early Eighteenth Century to the Present Day," in Stephen Sykes and John Booty (eds.), *The Study of Anglicanism* (London, 1988), pp. 30, 46-47. Geoffrey Haworth, *Anglican Deaconesses in New Zealand* (Auckland, 1997). See also Glenys Lewis, *Kept by the Power* (Christchurch, 1999).
148. In 1974 General Synod approved the ordination of women by one vote, subject to the confirmation of dioceses. In 1976 the ordination of women came into effect when six out of seven dioceses agreed. But the Bill had to lie on the table for a year to allow for an appeal; C. W. Haskell, *Scripture and the Ordination of Women* (Wellington, 1979).
149. In 1977, on the 363rd day, an appeal was lodged and a Tribunal hearing took place in November, 1977. This held that ordination was lawful, and in December, 1977 the first five women were ordained as priests, three in Auckland and two in Waiau; C. W. Haskell, *Scripture and the Ordination of Women*.
150. Had the ordination of women been found to be unlawful, but it proceed regardless in one or more dioceses, the province would have faced the prospect of schism, as occurred in South Africa in the 1870s; *Merriman v. Williams* (1882) 7 App. Cas. 484 (PC); see Anthony Ive, *A Candle Burns in Africa* (Gillitts, 1992). Such a development is also paralleled at provincial level in the more recent controversy over the election—with the approval of the American Anglican Council—of the openly homosexual Gene Robinson by the diocese of New Hampshire; James Solheim, Anglican Communion News Service, "Gene Robinson begins episcopate with call for inclusion", 13th November, 2003, see <<http://www.anglicancommunion.org/acns/articles/36/50/acns3672.html>>.
151. W. J. Hankey, "Canon Law," in Stephen Sykes and John Booty (eds.), *The Study of Anglicanism* (London, 1988), p. 211.
152. See Archbishop of Canterbury and Yorks' Commission on the Ministry of Women, *Women in the Anglican Communion* (London, 1935).
153. Aambit, "The Newsletter of the Association for Apostolic Ministry," No. 3, July 1988.
154. Jan Cardinal Willebrands, "Women Priests and Ecumenism," (9 October, 1975), 5 *Origins* 241, 243-4, at 243.
155. See Joseph Cardinal Bernardin, "Discouraging Unreasonable Hopes," (16 October, 1975) 5 *Origins* 257, 259-60.
156. Perry Butler, "From Early Eighteenth Century to the Present Day," in Stephen Sykes and John Booty (eds.), *The Study of Anglicanism* (London, 1988), pp. 30, 47.
157. Commission on the Ministry of Women, *Women in the Anglican Communion* (London, 1935).

158. This is consistent with the Roman Catholic Church's view: (1 July, 1976) 6 *Origins* 92-6; (3 February, 1977) 6 *Origins* 517, 519-24; (1977) 69 *Acta Apostolicae Sedis* 98-116.
159. Archbishop Runcie of Canterbury to Cardinal Willebrands, President of the Secretariat for Promoting Christian Unity, "Women's Ordination and the Progress of Ecumenism," (17 July, 1986) 16 *Origins* 153, 155-60.
160. Jacqueline Field-Bibb, *Women Toward Priesthood* (Cambridge, 1991), pp. 67-75.
161. Reg No 34 in Lambeth Conference 1968: Resolutions and Reports (London, 1968), p. 39.
162. (1 July, 1976) 6 *Origins* 92-96.
163. (3 February, 1977) 6 *Origins* 517, 519-24; (1977) 69 *Acta Apostolicae Sedis* 98-116.
164. "Letters Exchanged by Pope and Anglican Leader," (12 August, 1976) 6 *Origins* 129, 131-2.
165. "Apostolic letter on ordination and women," (9 June, 1994) 24 *Origins* 49, 51-2.
166. See, generally, Sara Butler, "The ordination of women: A new obstacle to the recognition of Anglican orders," in *Anglican Orders* (London, 1996), pp. 96-113.
167. Anglican encouragement of diversity again threatens the loose unity of the communion, with the present controversy which met the proposed consecration of Jeffrey John, a homosexual, as Bishop of Reading; Ruth Gledhill and Helen Rumbelow, "Archbishops urge gay bishop to stand down," *The Times* (London), 24 June, 2003.
168. The Act of Uniformity 1559 (1 Eliz I c 2) (Eng), which enshrined the Elizabethan Settlement, endorsed the first four ecumenical councils—Nicea 325, Constantinople 381, Ephesus 431, and Chalcedon 451 as the authorities by which heresy would be defined; Stephen Platten, *Augustine's Legacy* (London, 1997), p. 29.
169. Edward Norman, "Authority in the Anglican Communion," (1998) Ecclesiastical Law Society Lecture, Lambeth Conference, 1998, transcribed by the Society of Archbishop Justus; Article 21 of the Thirty-nine Articles of Religion, enacted in 1562, and confirmed in 1571 by the Subscription (Thirty-nine Articles) Act 1571 (13 Eliz I c 12) (Eng).
170. See Michael Davies, *The Order of Melchisedech* (Kansas City, 1979); Thomas Torrance, *Royal Priesthood* (Edinburgh, 1993).
171. Title D canon II.A.
172. *The Book of Common Prayer* (London, 1662).
173. J. V. Bullard (ed.), *Constitutions and Canons Ecclesiastical 1604* (London, 1934).
174. J. V. Bullard (ed.), *Constitutions and Canons Ecclesiastical 1604* (London, 1934).

175. This, perhaps the most severe penalty still remaining to church authorities, can be seen in a rudimentary form in Matthew 18:17 (And if he shall neglect to hear them, tell it unto the church: but if he neglect to hear the church, let him be unto thee as an heathen man and a publican); 1 Corinthians 5:1-5: It is reported commonly that there is fornication among you, and such fornication as is not so much as named among the Gentiles, that one should have his father's wife. And ye are puffed up, and have not rather mourned, that he that hath done this deed might be taken away from among you. For I verily, as absent in body, but present in spirit, have judged already, as though I were present, concerning him that hath so done this deed, In the name of our Lord Jesus Christ, when ye are gathered together, and my spirit, with the power of our Lord Jesus Christ, To deliver such an one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus.
176. Canons 77 and 78, 1604; J. V. Bullard (ed.), *Constitutions and Canons Ecclesiastical 1604* (London, 1934). Rather than being disqualified for office, college fellows at the University of Oxford were required to be in holy orders until the mid-nineteenth century.
177. Particular problems have arisen in respect of members of religious orders; see for example, *Allcard v. Skinner* (1887) All E.R. Rep. 90 [conflict of canonical obedience and the common law contractual doctrine of undue influence].
178. Title A canon II.1.
179. Const. C.15.
180. Title A canon II.1.1; Legal Advisory Commission, *Legal Opinions Concerning the Church of England* (London 1994); *Mabon v. Conference of the Methodist Church of New Zealand* [1998] 3 N.Z.L.R. 513 (CA).
181. *A New Zealand Prayer Book* (Wellington 1989), p. 901.
182. Title D canon II.A.5.
183. Title D canon II.A.12.6
184. Title D canon II.A.12.3.
185. Title A canon II.2; cf. English Canon C.8 (2).
186. Title A canon II.2.
187. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 708-709; declaration of canonical obedience.
188. See, for example, their right to burial; Burial of Persons Drowned at Sea Act 1808 (48 Geo III c 75) (UK).
189. Act of Uniformity 1551 (5 & 6 Edw VI c 1) (Eng); Religious Disabilities Act 1846 (9 & 10 Vict c 59) (UK) [to attend the parish church on all Sundays and holy days unless he has a reasonable excuse for his absence or unless he dissents from the

doctrine and worship of the church and usually attends some place of worship other than that of the established church]; Rubric at the end of the service for Holy Communion in the *Book of Common Prayer*; Rubric at the end of the Order of Confirmation in the *Book of Common Prayer* [to communicate at least three times a year, of which Easter shall be one—provided that he be confirmed or ready and desirous to be confirmed].

190. Bishop Say believed that the important aspect of the establishment was that the Church of England's parishes 'extend over every square yard of England and that every citizen resident in a parish, has, regardless of their own religious commitment or lack of it, a rightful claim upon their parish priest'; David Say, "Towards 2000: Church and State Relations," (1990-1992) 2 (8) *Ecclesiastical Law Journal*: 152, 153.
191. *Reynolds v. Monckton* (1841) 2 M. & R. 384.
192. *Reynolds v. Monckton* (1841) 2 M. & R. 384.
193. Or suicides or excommunicates; first rubric of the Burial Office; *Cooper v. Dodd* (1850) 7 Notes of Cases 514. In practice, the former disqualification was often avoided by the expedient of a coroner finding that a suicide had taken his life whilst temporarily insane.
194. General Synod, *An Honourable Estate* (London, 1988).
195. General Synod, *An Honourable Estate* (London, 1988). See English Canons B.30-36.
196. Timothy Briden and Brian Hanson, Moore's *Introduction to English Canon Law* 3rd ed. (London, 1992), p. 35.
197. Const. Preamble.
198. Indeed, charitable status, and certain taxation and other financial advantages shared by churches, may be partially intended for this purpose; see Sir Ivor Richardson, *Religion and the Law* (Wellington, 1962).
199. *A New Zealand Prayer Book* (Wellington, 1989), p. 891.
200. Title D canon I.A.12.3.
201. Though there is some difference over the permanent diaconate.
202. Title A canon II.3; Const. C.15.
203. 'Will you accept the order and discipline of this Church?'; *A New Zealand Prayer Book* (Wellington, 1989), pp. 894, 904.
204. They must make 'a declaration of adherence and submission to the authority of the General Synod'; Const. C.15.
205. 'I will pay true and canonical obedience in all things lawful and honest'; Title A canon II.3.
206. See the interpretation of Beattie J in *Gregory v. Bishop of Waiapu* [1975] 1

- N.Z.L.R. 705, 708-9, where the bishop's power of government is explained in constitutional terms.
207. *A New Zealand Prayer Book* (Wellington 1989), pp. 894, 904.
208. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 717; applying *Ridge v. Baldwin* [1964] A.C. 40, 45; *Durayappah v. Fernando* [1967] 2 A.C. 337; *Lower Hutt City Council v. Bank* [1974] 1 N.Z.L.R. 545.
209. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705.
210. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705. Cf. *The Code of Canon Law: in English Translation* prepared by the Canon Law Society of Great Britain and Ireland (London, 1983), Canon 184 §1.
211. Donna Buckingham, "Working for God: Contract or Calling," (1994), 24: *VUWLR* 209.
212. 'No person who has been admitted to the order of Bishop, Priest, or Deacon can ever be divested of the character of that order'; Title G canon XIII.8.1.
213. J. V. Bullard (ed.), *Constitutions and Canons Ecclesiastical 1604* (London, 1934).
214. *Barnes v. Shore* (1846) 8 Q.B. 640, 660, 671 per Lord Denman.
215. Which he may do under Title G canon XIII.8.
216. Title G canon XIII.8.1.
217. Title G canon XIII.8.1.
218. *The Code of Canon Law*, (London, 1983), Canon 290.
219. *Mabon v. Conference of the Methodist Church of New Zealand* [1998] 3 N.Z.L.R. 513 (CA), where a Methodist minister, who had been dismissed from his parish, brought a personal grievance claim. The Employment Court held that the minister was not an employee and the Court of Appeal upheld that finding.
220. Legal Advisory Commission, *Legal Opinions Concerning the Church of England* (London 1994); *Mabon v. Conference of the Methodist Church of New Zealand* [1998] 3 N.Z.L.R. 513 (CA).
221. *Gregory v. Bishop of Waiapu* [1975] 1 N.Z.L.R. 705, 711; *Dodwell v. Bishop of Wellington* (1886) 5 N.Z.L.R. 263, 266.
222. Human Rights Act 1993 (NZ); Employment Relations Act 2000 (NZ); Donna Buckingham, "Working for God: Contract or Calling," (1994), 24 *VUWLR*: 209.
223. Through the separate Maori hierarchy.
224. The current Primate, the Rt. Revd. John Paterson, is rarely referred to as such (Primate or Presiding Bishop), being more frequently styled simply the Bishop of Auckland.