

LAW AND ORDER IN THE CHURCH

Let it be admitted at once that the subject of Church Law is hardly calculated to inspire excitement, or even interest. It too readily conjures up associations of the most frustrating kind: interminable debates in Assemblies not on any point of substance but on some tedious point of order; or the intrepid legalist, who with a few sharp questions can sink a promising scheme and kill a constructive discussion stone dead. Let me say that I sympathize with this popular and justified criticism. After all, Cox's *Practice and Procedure of the Church of Scotland* or its equivalent in other denominations is to most of us more of a necessary evil than a *chef d'œuvre* of theology. There is, however, another view which deserves a hearing, a more exalted view, typified, if mildly exaggerated, by Canon E. C. Wood, writing in 1888 on canon law: 'The canonist is not a mere lawyer. Nor can a mere lawyer ever be a true canonist. The canonist must begin with theology. Unless he is a theologian he can never really be a canonist. The study of Canon Law is a holy study, because the Canon Law itself is a very holy thing, and among all holy studies we venture to say none is more sacred than that of the *jus canonicum*. Not even mystical theology itself, treating though it does of sublimest truth and deepest mysteries touching the divine espousals of the Christian soul with God, not even this awful department of the great science is more sacred than is the sacred jurisprudence of the Church. It is a very solemn thing to tread the heights of Carmel; and we must venture to do so: but it is no less solemn a thing to enter the praetorium, and we must bare our heads and bend the knee as we enter the curia of Christ our King.'¹ As one who is a mere lawyer, with no pretensions to being a true canonist, I could not go all the way with Canon Wood's adulation, yet it is in that spirit that I want to look at the function of law in the Church, in the past and in the present, concluding with a few tentative suggestions regarding the scope, as well as the dangers of Church Law in our time.

I. The Role of Church Law in the past – the New Testament Evidence

We cannot at the start side-step the question, why law, anyway, in the Church? If the Church is the community of redeemed, promised the help of the Holy Spirit, preaching and living by the Gospel of grace which is the gospel of freedom of deliverance from the shackles of the law, why should it have to bother any more with rules and

regulations which can, at a certain level, only restrict or inhibit the spontaneous obedience of Christians?

The answer is that whatever else the Church is, it is certainly a community of human beings to whom is guaranteed neither omniscience nor perfect charity. All the evidence of history and of our own eyes is that whenever members of the Church have spurned order or turned their backs on law in the sense of some form of agreed and enforceable practice and policy, the result has been not any increase in charity, vitality or obedience, but rather, schism, exclusiveness, breach of fellowship and disunity of the faith. Not only sin but the corporate nature of Christianity makes the attitude 'confess Christ and do what comes naturally' utterly impracticable.

Thus the New Testament makes no secret of the fact that disputes arose even amongst the earliest Christians, disputes which had to be resolved one way or another. There were also differences in practice, some trivial, but some which could give rise to serious problems threatening the peace of the Church. This posed a simple alternative: either the Church must be its own arbiter or the civil authority, the civil courts, must act. The New Testament leaves no doubt as to which method is more in accordance with the nature of the Church (e.g. Matt. 5:25; I Cor. 6.1). Because the Church is not the creation of nature or of the common consent of its members, it must have power to order its own affairs, if, as is required, all things are to be done decently and in order (cf. I Cor. 14:40). We therefore find ample evidence of the young Churches taking seriously their duty in this regard (e.g. Matt. 15:18). The Jerusalem Council in Acts 15 is an excellent example of matters of important missionary policy being referred, discussed and decided upon. The Apostle Paul clearly felt that it was part of his responsibility not only to instruct the Churches in matters of doctrine (e.g. I Cor 11:23-26) but in matters concerning discipline (e.g. I Cor. 5:2-7, cf. Matt. 18:15-17). the orderly and reverent conduct of worship (I Cor. 14 and 11) and morality. Attention has frequently been drawn to Paul's own distinction in the status of his advices, between what had been transmitted to him, 'received of the Lord', and what he spoke of as 'by permission and not of commandment' (I Cor. 7:6 and 25). This distinction between what we may call 'doctrine' on the one hand and 'expedient practice' for the good of the community on the other ('All things are lawful for me but all things are not expedient' - I Cor. 6:12; 10:23), is something with considerable implications for Church Law, and we shall have to return to it. For the moment let us note only that the Acts of the Apostles and the Epistles of the New Testament take it for granted that it is right for the Church to receive advice, to decide and act on what is expedient and good for Christian life. Certainly there is evidence of great diversity in practice, especially in matters of

Church order, and it would be quite impossible to argue for anything like a uniform system of Church law in operation in the Churches of the New Testament period. But that a principle that some decisions had to be taken and observed, some practices and procedures agreed and acted upon was accepted from the earliest days could surely be demonstrated without too much difficulty, thus marking both the beginnings and the necessity of law in the Church. It is to the development of Church law that I now turn.

II. The Development of Church Law

In the second and third centuries there is a little evidence of the growth of a general law of the whole Church. Local decisions had to be taken and were taken, for example Cyprian's regulations in the controversy over heretical baptisms; but these do not seem to have been embodied in any formal legislative act, at any rate which has survived. But the accumulation of assorted disciplinary decisions and the demands of justice that different local bishops or congregations should not decide important matters in different ways (such as the terms on which, in times of persecution, an apostate might be readmitted to the fellowship) was at least one of the functions of local councils of the beginning of the fourth century, and of course, of the General Councils, whose written enactments were referred to as 'canons'. Of particular interest in this context is the Council of Nicaea. Its pronouncements are used by Athanasius² to illustrate an important distinction, a distinction analagous, perhaps, to that distinction already noted in Paul between what was 'of commandment' (doctrine) and what was 'by permission' (expedient practice). Athanasius points out that the Council of Nicaea did two different kinds of thing: it considered, first, the credal formulation regarding the relation of the Son to the Father and, second, such practical matters as the date of Easter. In regard to the first, the doctrinal question, the Council 'decided' nothing: it merely claimed to pronounce the faith of the Church as held from the beginning. In regard to the second, the date of Easter, it was proposed to legislate a new rule to govern the Church in the future. If this is a legitimate distinction – between the Church's judicial or declaratory authority in matters of faith (doctrine, 'of commandment') and its legislative power with regard to rites, ceremonies and practice in the changing circumstances of history (expedient practice, 'by permission') – then it is worth holding on to. It is certainly a distinction which is reflected in the Roman distinction between 'dogmatic constitutions' (which cannot be changed) and 'disciplinary canons' (which can be changed); and it is one which is not unreflected even in the Declaratory Articles of the Church of Scotland, 1926, where a distinction is clearly made between Article 1 (the doctrinal statement) and the other Articles,

the latter readily changeable, subject to certain safeguards, the former not.³

From small and scattered beginnings, the positive provisions of law in the Church swiftly multiplied. They comprised the canons of ecumenical Councils, and of provincial synods as well, plus the individual rulings of Popes and bishops in answer to particular questions referred to them. For long, the value of flexibility in matters of Church Law was clearly recognized. Uniformity was not the *sine qua non* it was later to become, and a measure of uncertainty, which is the price of flexibility in law, was not felt to be intolerable. In this connection it is worth recalling the familiar well-known answer given by Pope Gregory in 601 to the question put by Augustine of Canterbury. Augustine's question was: why, given that the faith is one, do customs concerning masses differ from place to place? Gregory replied: '... it is my wish that if you have found any customs in the Roman or the Gaulish church or any other church which may be more pleasing to Almighty God, you should make a careful selection of them and sedulously teach the Church of the English, which is still new in the faith, what you have been able to gather from other churches.'⁴ It is interesting to compare this attitude with the not dissimilar attitude reflected in the statement of fallibility and openness to correction on the introduction to the Scots Confession, 1560. Uniformity, did, of course, loom larger later, as canon law developed into a system extended more and more to deal with matters of civil law but with which civil courts were not equipped to cope, and as lawyer Popes used the law to make their jurisdiction secure, their rule efficient and to have their decisions enforced.

Codification began as early as the sixth century with private collections of decisions, like the 'Dionysiana', reports of leading cases, accompanied by glosses by the compilers, taking account of the opinion of the Fathers, when available. Sometimes there were not so much statements of what the law was, as expressions of what the compiler thought it should be, the compiler using the simple device of inventing papal or other decrees to support his position (e.g. the Forged Decretals or Capitularies of Pseudo-Isidore, published in France in the mid-ninth century, putting forward views widely held in other parts of Europe regarding the jurisdiction of the papacy and protecting appeals to the Pope from interference by the civil power). But it was not until the twelfth century that the first systematic collection of the canons of the Church was made. This was the *Concordia Discordantium Canonorum* or *Decretum* of Gratian, the monk of Bologna, the work which was to earn its author a place and favour in the fourth heaven of *Il Paradiso*.⁵ To look at now, the *Decretum* of Gratian is a bewildering enough collection of assorted sources – decretals, canons, dicta of the Fathers, Frankish Capitul-

aries etc. – but it did try to deal scientifically with all the many now contradictory texts, using Roman Civil Law as cement to fill in the cracks and overcome the gaps.

I can attempt no analysis here, except to comment that it follows in form the normative work of Civil Law – Justinian's Institutes – in its threefold vivision of (i) Persons – dealing with the source of law, clergy, ordination, conduct and behaviour; (ii) Actions – leading cases on simony, delinquency, Church property, religious orders, marriage; and (iii) Things – churches, furniture, vestments, the Eucharist, Baptism, Confirmation, the Liturgical Year. That is perhaps enough to indicate the vastness of its scope. One of its effects may be indicated by quoting the assessment of the Anglican Archbishops' Commission of 1947: 'He [Gratian] provided the Church with a theory of sovereignty which was to resolve the difficulty of how new laws were made. Previously, owing to the fact that neither the papacy nor the Councils had, to anything like the necessary extent, given to the Church a workable system of law, the law had to be brought up to date by the forging of legal texts: but in Gratian, the papacy stands out as the direct sovereign lawgiver of the Church, and the source from which new law can come – a theory which the great lawyers who a few years later were to occupy the papal throne were not slow to make use of. For the rest of the Middle Ages the law of the Church and the law made or sanctioned by the papacy are to all intents and purposes one and the same thing. The *jus commune* has become the *jus pontificium*.'⁶

Gratian's Decretum was published in 1140, and the next 150 years saw the ascendancy of a series of strong-minded Popes, who were, in the main, trained and active lawyers, whatever else they might have been. They legislated abundantly and built up a remarkably efficient, widespread legal system. It is not surprising that the study of canon law almost superseded the study of theology. Further definitive codifications were required to make available the many conciliar canons and papal decretals issued after 1140. There thus followed the Decretals of Gregory IX (1234), the Sext of Boniface VIII (1298), the Clementines of Clement V (1317), the Extravagantes of John XXII and the Extravagantes Communes (decretals from Boniface VIII to Sixtus IV). Different manuscripts of these collections circulated but in 1500 these six collections received definitive form when they were published together in Paris. This whole collection is the Corpus Juris Canonici, the common code of canon law, which remained authoritative in the Church of Rome right up to the new codification in 1918. It is interesting to note in passing that according to the Archbishops' Commission in 1947, it can still be appealed to as last resort when no other provision obtains and is therefore still part of the ecclesiastical law of England.

To return, from the *ad hoc* decisions on policy and agreed action, in the early period, Church law had by the fifteenth century developed into the huge and all-embracing machine of code law – of a sort – specific cases being decided in the Church courts by deduction from the *Corpus Juris Canonici*.

It covered a vast range of subjects, concerning the whole life of the Church and society. Naturally, it was concerned with ecclesiastical order and discipline (not excluding the delinquencies of ‘sporting and pugnacious clergy’!), and the regulation of rites and ceremonies, but it was also concerned with much that was of general social application, in the whole law of marriage, succession and intestacy; theft, usury, false witness, forgery, murder. Its complications and distortions and the need to balance one provision against another in an agreed way meant that its administration required a highly trained (and, incidentally, highly paid) legal profession. There can be no question that in its day, Canon Law was a real unifying force in the culture of Europe, dispensing a brand of law that was both more efficient and more just than its civil counterparts, and it is not surprising that its influence was felt in society long after its papal, universalist basis was abandoned (e.g. Maritime Law, International Law).

It would be wrong to give the impression that Canon Law was a thoroughly rigid structure. For one thing, it allowed plenty of scope for local legislation by provincial synods and for individual bishops to cope with special local circumstances. Furthermore, due regard was paid to the place of custom. One of the perennial questions of canonists was: How can the law be changed? It was a long established principle that the law could be changed, ‘legally’ changed, by custom. Precise specific provision had lapsed – by desuetude, consuetude or omission, or whether a reasonable custom had acquired the force of law. There were also special provisions to deal with cases of hardship (‘*epieikia*’, cf. the ‘Noble Officium’ of the Court of Session in Scotland and of the General Assembly of the Church of Scotland) though the question of who had or had not the competent legislative authority to grant dispensations was always a thorny one. More akin to statute law than to common law (with its system of binding precedents), it was yet resilient enough to allow considerable equitable variations from place to place and from time to time. We must therefore now enquire what was wrong with it, why was it repudiated, *in toto*, by the Reformers.

III. Criticism of Canon Law

The short answer is, of course, that it was tied so closely to papal authority, that if the authority of the Pope was denied then the authority of his laws and his system of laws had to be called in

question. When Luther, true to his earlier promise, committed the Canon Law to the flames along with the papal bull of condemnation, he explained his action: 'The canon law was included because it makes the Pope a god on earth.'⁷ But more particularly it was seen, as Church Law, to be too wide in its scope. We cannot here go into an adequate examination of this question, but it does appear that the scope, the extensiveness of Canon Law was seen to be illegitimate in at least two significant directions. First, it included (and therefore brought within the ultimate jurisdiction of the Pope) too many matters which were strictly matters of civil law which should have been subject to the jurisdiction of the local civil sovereign. For Luther, the law of marriage, surprisingly, was a case in point. Wills and intestacy, jurisdiction over the clergy and Church property are perhaps more obvious examples, and the political factors involved here need no emphasizing today. There was too much, in short, which the Church *qua* Church had no right to deal with but which, under Canon Law, it claimed to control. The legitimate and necessary spiritual jurisdiction of the Church with its legitimate and necessary spiritual sanctions had become dangerously and irrecoverably compounded with the civil jurisdiction of the magistrate which the Pope and, according to Calvin, 'false bishops' had arrogated to themselves. But secondly, and for Calvin this was decisive, the whole edifice of Canon Law had to go because by transgressing beyond its proper sphere it was a major threat to the liberty of consciences which Christ had made free (e.g. the penitential system). Church Law had its proper place in that all things might be done decently and in order – but Canon Law went far beyond this, prescribing obligations and duties unfounded on the Word of God. The Creation of new 'human laws', according to Calvin, 'if they are imposed for the purpose of forming a religious obligation as if the observance of them was in itself necessary, we say that the restraint there laid on the conscience is unlawful . . . prescribing a new form of worship, and intruding necessity into things that are free'.⁸ Perhaps another way of putting this would have been to say that the two distinct functions of the Church which Athanasius had discerned in Nicaea – declaring what the faith of the Church is and legislating for what is expedient – had under Canon Law been confused and converted entirely into a matter of law, under which the Word of God was once again being made void – by the traditions of men.

In the eyes of the Reformers, then, Canon Law, had to go, and so it did, in a variety of ways and in a variety of places. The solution in England was, perhaps characteristically confused, with a *de facto* if not *de jure* repudiation being effectively accomplished. Ecclesiastical courts and ecclesiastical lawyers flourished in England, working out a weird but distinct tradition based on the old papal and domestic

canon law, the reformed canons of 1603, the previous decisions of the Church courts, parts of the Roman Civil Law and English Statute Law. Out of this amalgam of authorities – admirable or deplorable, a lawyer's dream or a litigant's nightmare, depending how you look at it – a vast body of laws built up, dealing not only with Church matters but with maritime causes! It was in this milieu that such international law as there was developed (the contact with Roman Law and the old canon law being particularly helpful at this point). It was only in 1857 that these courts, the 'Doctors' Commons' were abolished, being superseded, to the constant regret of many English canonists, by Probate, Divorce, and Admiralty Division of the High Court for civil matters and by Archbishops' and Bishops' Courts for strictly ecclesiastical affairs.

In Scotland, though many of the initial actions of the Scottish Reformers were in direct breach of Canon Law, it was not, as such, expressly repudiated until an Act of 1567. (It would be an intriguing historical question to investigate how, for example, the heirs of a Scotsman of means, dying in 1561 intestate, went about entering into possession of their father's estate.) Bearing in mind that for long enough the only courts available in Scotland had been the ecclesiastical courts administering Canon Law – the Court of Session and the College of Justice was not founded until 1533, and then as a result of papal grant! – it is not surprising that even after the repudiation of canon law, many of its provisions which did not conflict with Reformation principles, were, in practice, preserved (e.g. the parochial system, laws of marriage, succession). It is commonly acknowledged that the development of Scots Law owes much to the principles of Roman Civil Law: it might be also shown that at least part of this influence came from the long-familiar traditions of Canon Law as well.

IV. What was put in its place?

But to return specifically to Church Law, if Canon Law was scrapped what was put in its place? If that particular system of Church Law was objectionable, the idea of Church Law was not. Calvin was explicit: 'We contend . . . not against the sacred and useful constitutions of the Church which tend to conserve discipline, or decency, or peace.'⁹ The safety of the Church demanded that all things be done decently and in order and therefore 'no policy is sufficiently firm unless fortified by certain laws, nor can any rite be observed without a fixed form. So far, therefore, are we from condemning the laws that conduce to this, that we hold that the removal of them would unnerve the Church, deface and dissipate it entirely.'¹⁰ As far as Scotland is concerned, this view was echoed in the First Book of Discipline, 1560.¹¹

The need for Church Law of some kind, therefore, was clearly acknowledged, even taken for granted. It is not my purpose now to trace the development of Church Law after 1560 in Scotland or elsewhere – the elaboration of Church courts and their functions, the growing body of decisions of the General Assembly, the particular matters which have been and are considered to be the subject of Church Law. Rather I should like to try now on the basis of the foundations, growth and development and repudiation of Canon Law to elucidate certain general principles which seem to emerge as at least helpful in determining the scope and limits of Church Law.

V. General Principles

(1) Perhaps the most important principle to have emerged from our survey thus far is that *law is not doctrine and doctrine is not Law*. Now this, of course is not to say that the Church has no duty to formulate its doctrine, to declare from time to time what the faith of the Church is, what the Church believes, constantly testing and checking the source of its doctrine, namely Scripture. This is clearly a prime function of the Church – but it is not an ecclesiastical legal function, nor can what is proposed for belief be imposed or insisted upon by ecclesiastical legal sanctions. Only when this is clearly recognized can Church Law be freed of the charge of binding consciences in matters in which Christ has made men free – the gravest charge against the old canon law. Now there is no need to pretend that it is always easy to distinguish law from doctrine. There is bound to be a close relationship and it is important that what law is does not imply anything that is inconsistent with doctrine, just as it is important that what is doctrine should in its practical implications be adequately reflected in Church Law. This is not easy. When practices have been legally observed for centuries, it is only natural that they should acquire the status of necessities, bound up with the very essentials of Christian belief. (Would the notion of full-time-only ministers of word and sacrament perhaps fall into this category?)

But for this very reason, it does seem to be one of the constant tasks of the Church, of each Church, to examine its life and practice and to determine what is of doctrine and what is of law, in Pauline language what is ‘of commandment’ and what is ‘by permission’.

If this practice of sifting law from doctrine, or sanctified custom of tradition from doctrine is seriously engaged in, it is not to be expected that all Churches will arrive at the same result: there would certainly not be agreement as to the extent to which *Church Order* is a matter of doctrine and to what extent a matter of law (hierarchical or consistorial or neither: the question of episcopal succession). But a great deal of necessary ground clearance would

undoubtedly be accomplished for genuine ecumenical discussion if this activity of sifting law from doctrine were openly and consciously tackled – consciously, because the alternative is to do it unconsciously, thereby opening the doors to rationalizing existing practice and theologizing matters of law.

(2) If law is distinguished from doctrine, it becomes possible to recognize *Church Law* frankly as *the servant of expediency*, and therefore changeable. It may be thought rash or at least unwise to talk quite openly in terms of ‘expediency’, it implies a lack of more honourable reasons for doing what you want to do. But there is some support in the New Testament at least for maintaining that expediency was not always the dirty word it has lately become: it may be a useful and legitimate guide for the good order of the Church; moreover, within the Christian community even liberty on certain matters may have to be restricted on the grounds of expediency, for the sake of the brethren, in the interests of charity (I Cor. 6:12; and 10:23). It may, then, be both legitimate and necessary to say that law is for expediency and to say it openly with a clear conscience. There is no new discovery. J. A. Hodge, in 1884, could write as follows: ‘Where should we look for a form of Church Government? To expediency, to the nature of the Church as the Kingdom of Christ, to the Scriptures, especially of the New Testament, and to the practice of the primitive Church and of the Churches which are not corrupted.’¹²

Church law is to promote decency and order within the Christian community, in Christian life in the changing circumstances of time, society and history, and unless we are able to say this clearly, then what inevitably happens is that the forms and laws appropriate to one age are carried on into the inappropriate circumstances of other ages, antiquated structures embodied in the law become sanctified and legalism has to be resorted to in order to justify them. Calvin understood this. After affirming that ‘the whole sum of righteousness and all the parts of divine worship and everything necessary to salvation the Lord has faithfully comprehended and clearly unfolded in his sacred oracles, so that in them he is the only Master to be heard’, Calvin continues: ‘But as in external discipline and ceremonies, he has not been pleased to prescribe every particular that we ought to observe (he foresaw that this depended on the nature of the times and that one form would not suit all ages) in them we must have recourse to the general rules which he has given, employing them to test whatever the necessity of the Church may require to be enjoined for order and decency. Lastly, as he had not delivered any express command because things of this nature are not necessary to salvation, and, for the edification of the Church, should be accommodated to the varying circumstances of each age and nation, it will be proper as the interest of the Church may require,

to change and abrogate the old as well as to introduce new forms.¹³

It follows that if law is for expedience it must, of necessity, be open to change. This would not need saying were it not something that the Churches are constantly in danger of forgetting. It is too easily forgotten that whatever is proper Church Law because it is Church Law is liable to and available for change.

A concrete, and uncontroversial illustration might assist at this point. Under the law of the Church of Scotland, the Church is organized locally in territorial parishes, a system carried over from canon law at the time of the Reformation and one which has on the whole worked sensibly and well. But in the present time, in our pluriform industrial society, it has become increasingly clear to most people that an exclusively parochial organization, in terms of territorial parishes, is insufficient. The good order of the Church, as well as the demands of mission and evangelism, seem to require that the parish system be, if not replaced, at least supplemented by some much more flexible form of organization – to allow, for instance, team ministries to be set up, and ministries of word and sacrament to be exercised among special non-territorial groups, based not on place of residence but on areas of work or education or even entertainment. But the present law of the Church gives no encouragement to the development of such special ministries: indeed, it is largely an impediment to experiments along these lines. In this predicament, the answer too readily accepted is that if the law does not permit of such special ministries, they must be treated with grave suspicion. A proper understanding of Church law would, however, suggest a different answer: namely that the law must be changed. (To attempt innovations of this sort without the backing of Church Law would be ineffective because lacking the general approval and support of the Church, and naive, certainly not conducive to the good order of the Church.)

It would not be difficult too, to illustrate this same point from other areas of contemporary Church life: disparate size of presbyteries, Commission of Assembly, delegation in all our courts and committees, or to get away from the Church of Scotland, the whole question of the celibacy of the clergy in the Roman Catholic Church. One could multiply illustrations. But the main point is that Church Law is available for use, as the servant of expediency and so properly subject to change.

(3) *Church Law has a positive role to perform in the life of the Church; it is not merely negative.*

There are many other points of importance which any adequate treatment of the scope and function of Church Law would have to cover: for example the relation between law in the early Church and the Sanhedrin: or the relation, if any, between Church Law and

natural law, so important to the scholastics and the bearing on this of the modern positivist movement in secular jurisprudence; or the relation between Church Law and the civil and criminal law of the land: or the whole question of the proper sanctions of Church law. These are all important matters. But one final point of a general nature has to be made. That is the need to recognize the positive function of Church Law in guiding the life, or perhaps the style of life of the Christian community.

It is by now a truism that in any society, the factors which determine how its members behave are many and complex: it is not a matter of law only, or of personal choice only, but of both of these plus a large and bewildering measure, of custom, convention, habit, economic necessity, environmental influence and so on. Law is not the only factor, but it does play a part in influencing the life of society. So in the church: law is certainly not the only thing that determines the style of life in any age – doctrine, custom, convention, taste, habit and many other factors all play a part. But law, though not exclusive, has its part to play, and, if rightly used, an important part to play. What I have in mind is not legislation for belief, or even legislation for morality. (This might have been possible, though dangerous, in past ages: now, the nature of the proper sanctions of Church Law would not make any such moral legislation effective, even were it thought to be within the scope of Church Law.) Rather what I want to have recognized is that law can be used to form and reform the structures within which the Christian life of worship and witness is to be lived: it can be used not just to deter certain actions but to make possible actions of a certain kind. This is what I mean by its positive function.

This is the day when all talk is of the evils of clericalism, of the need for shared responsibility and full participation by all in the life and witness of the Church. Very well then, let our Church Law reflect this conviction, and promote action based upon it, being less pre-occupied with the rights and duties of ministers of word and sacrament and more concerned to define the role and authority of all men and women, with their varying gifts within the Church. This is the day of affluence and materialism, when, more than in any previous age, Christian commitment in terms of use of money requires constant review. Very well then, let the law of the Church reflect in some measure this new dimension of obedience.

It goes without saying that merely changing the law or inventing new laws can accomplish little if not accompanied by the genuine understanding and the personal backing of ministers and congregations. But given these other factors, Church Law can accomplish something positive, by setting the structures within which the more clamant needs of the present can be met. The contention, in other

words, is that Church Law, instead of being an obstacle to be overcome, can and should be looked upon as a valuable instrument for good, for assisting the dynamic life of the Christian community.

In most of the Reformed Churches we have in Church Law, if we would only use it, a means of sponsoring and 'blessing' new institutional forms which may indeed be largely provisional, an instrument capable of allowing for ordered flexibility and freedom of spirit, with a genuine hermeneutic function of helping to translate the Gospel into life together. The task is just to recognize this. Church law is not for deadening sanctification nor for keeping bad men in their place: it is, rather, for ordered and obedient change, and for freedom in Christ.

NOTES

1. E. G. Wood, *The Regal Power of the Church* (1888 ed.), p. 10, quoted by H. S. Box, in *The Principles of Canon Law*, London, 1949.
2. *De synodis Arminii in Italia et Selucii in Isauria*, 5 (E.T. *Select Treatises against Arianism*, Oxford, 1842, Pt. I, p. 80): 'They wrote concerning Easter, "It seemed good as follows", for it did then seem good that there should be a general compliance; but about the faith they wrote not "It seemed good" but "Thus believes the Catholic Church" and thereupon they confessed how the faith lay, in order to show that their own sentiments were not novel, but Apostolical. . . .'
3. Cf. *Articles Declaratory of the Constitution of the Church of Scotland*, 1926, Art. VIII.
4. Bede, *Hist. Eccl.*, i.27 (ed. B. Colgrave and R. A. B. Mynors, Oxford, 1969).
5. Dante, *Il Paradiso*, Canto x, 104-5: ' . . . Grazian, che l'uno e l'altro foro/aiuto si che piace in paradiso.'
6. The Canon Law of the Church of England (Report of the Archbishops' Commission on Canon Law), London, 1947.
7. Quoted by R. H. Bainton, in *Here I Stand* (Nashville, Tenn., U.S.A.), p. 128.
8. Calvin: *Institutes*, Bk. IV, c. x, 5 (E.T. by H. Beveridge, London, 1957, Vol. II, pp. 416-17).
9. Calvin, loc. cit., c. x, 1 (E.T. Vol. II, p. 414).
10. Calvin, loc. cit., c. x, 27 (E.T. Vol. II, p. 434).
11. First Book of Discipline (1560), c. ix, 1.
12. J. A. Hodge, *What is Presbyterian Law?* (Philadelphia, 1884), p. 115.
13. Calvin, loc. cit., c. x. (E.T. Vol. II, p. 436).

D. W. D. SHAW, New College, Edinburgh