

**Anglican Church of Southern Africa Canon Law Council Conference
24th January 2019, Outlook Lodges OR Tambo – Kempton Park.
The Revd Canon Dr Vicentia Kgabe**

Theme: Creating Canon Lawyers for ACSA: An Academic Process

1. Introduction

I have been kindly requested to talk under the theme, “*Creating Canon Lawyers for ACSA: An Academic Process*”. Just to give a little background on this topic and its origin, it came about when we invited the Canon Law Council members to the College in July 2018, to address and workshop both students and academic staff on the latest developments regarding the work of the Canon Law Council.

The audience had a mixture of those who in their previous role as lay leaders, Fellowship of Vocation members and Discernment candidates came across or used the Canons and Constitution. And we also had those who never heard of them not used them. In our conversation with our guests, we realised how important it is to have Canon Law studies as one of the Core courses and not an Elective offered by the College.

By changing it to a Core course, means that every student who studies at the College will have an opportunity to study Canon law as a subject rather than only the few that will choose to do it either to accumulate more credits to pass or because the Course that they are doing i.e. Anglican studies has a component of it. Canon Law lends itself to 4 disciplines of theology, Systematic Theology, Practical Theology, Anglican Studies and Church History. The question that we will be deliberated on is which discipline it will be incorporated into.

Everyone preparing for ordination needs to be taught Canon Law because at the Ordination service they must take Oath of Canonical Obedience and the Declaration of Assent is taken by all clergy.

2. The relationship between theology & canon law

The relationship between theology and Canon Law can be best summarized this way “*in theology the church contemplative is speaking to the people, and in Canon Law, the Church active is guiding the faithful*”. Both Theology and Canon Law mutually support each other and reveal something of the life of God’s covenanted community. South African Roman Catholic Canon Law Specialist Monsignor Marc de Mûelenaere, puts it this way, “*just as theology can be described as faith seeking understanding, so can Canon Law be described as faith seeking action. Theology is the theoretical foundation upon which Canon Law must build to propose a practical course of action*”.

The term Canon comes from the Greek word *κανών* (kanon), which is a carpenter’s ruler. So, Canons of the Church is the name applied to the disciplinary rules regulating the outward conduct of those members whilst upon earth.

Mortimer writes that “*the Canons are norms and standards of Christian behaviour. They have but one purpose – to keep the church from evil and to prescribe what is necessary or useful to the living of life.*”

Many of us might have a love/hate relationship with the Blue file, at one point it was a Bluebook. The first time I had some sort of “*feelings*” about the Canons and Constitution, was

in 2001, my first year back in the diocese after my years of formation and academic studies at the College of Transfiguration - Grahamstown.

It was at a monthly clergy meeting held at Christ the King Parish Sophiatown, the guest was the Adv Ronnie Bracks in his capacity as the Diocesan Registrar. His role was to educate us and/or refresh our memories on the Canons and Constitution, and the difference between them and the Diocesan Rules/Acts.

What made me sit up straight and pay serious attention was when Adv Bracks, said, *“after all you have learned and heard today, you can decide not to follow the rules of the church and do as you like. But let me tell you, when you have broken these rules and are charged you and I will meet (again), and between us there will be a table and on top of that table midst other things will be a copy of Canons and Constitution and I will charge you according to what the Canons say.”* And at that stage, as part of your defence, you cannot use this one *“I didn’t know that’s what the Canons say or require of me!”*

And since then I have lived, taught, led and ministered in a way that will make sure there’s no table with a copy of the Canons between Adv Bracks and I or any legal officer of the church.

Professor Ladislav Örsy, a renowned Canon Law Theologian, makes this important point about the church and Canon Law he writes, *“right from the beginning the Church perceived itself as a human community: the very name of it, ecclesia, means ‘gathering’. This fact is of foundational importance because it follows that the internal and natural laws of human community are relevant for and operating in the Church. The nature of Canon Law reflects the nature of the Church: it is truly human because the Church is a human community; it has an affinity with the divine because it is an integral part of the Church as a sacrament. And the purpose of Canon Law is to assist the Church in fulfilling its task which is to reveal and to communicate God’s saving power to the world. The law can be also a teacher to the people, as Torah once was guiding the Israelites toward the kingdom”.*

3. The discipline of the Church to those in Holy Orders

We live and minister in a society where, increasingly, morality is being privatised and the individual is all-important. All forms of authority are treated with suspicion and the exercise of discipline is unpopular. Even in an increasingly privatised and individualised society, the church remains essentially a community of believers, who are bound together as brothers and sisters in Christ. A system of discipline is essential in holding together the members.

For such an organisation the quality and accountability of its clergy are vital. They are charged with teaching, encouraging, caring and being an example of Christian living. Both the believing community and the surrounding society have this expectation.

Those called to leadership in Holy Orders are part of the ‘*Laos*’ of God. The general expectations of discipleship are as applicable to them as they are to any believer. To be ordained is to be placed in a responsible office and to be available alongside all sorts of people who are in vulnerable and sensitive situations. Holy Orders only make sense as a part of the whole believing community and when exercised in a responsible manner.

Those in Holy Orders are set apart for the office and work of ministry. This is both a responsibility and a privilege. Ordinary members look to their clergy and trust them. And within our church, those in Holy Orders accept:

- a) **An institutional responsibility:** to clergy is allocated the performance roles considered to be central and essential to the Church's life.
- b) **A teaching responsibility:** clergy are trained to be able to feed the flock, clarify and explain Scripture, belief and behaviour.
- c) **A representative responsibility:** for many in our society, clergy stand for the church and are seen to speak on its behalf.
- d) **A responsibility to be an example:** *'practise what you preach'* is a fair demand. Clergy is expected to live a sacrificial life of self-denial in such a way both the Church and society are provided with a wholesome and attractive demonstration of godly living. (we don't need to come to a point where we suggest 'lifestyle audit' for our stipendiary clergy)
- e) **A responsibility of confidentiality:** clergy become involved in situations of confidentiality, or where people are particularly vulnerable. These occur both within the church and in society generally and demand a more than the usually careful standard of responsibility.

What Adv Bracks and my home diocese did when I returned from College, should be a norm and not an exception. It is, not unreasonable that the Church should determine the standards to be expected of its clergy. This is essential for the protection of the church and those who seek to serve. It is vital if the Church's leadership is to serve with the confidence of the laity. It is necessary for the clergy so that they know clearly what is expected of them.

4. In the beginning was Scripture

The Anglican Church faith stands on 3 pillars, Scripture, Reason and Tradition. There's a fourth one that has been included and that is Experience. Before we had Canons and Constitutions, we had the scripture and it is the source that we turn to for guidance in many instances.

We are introduced in scripture to God... Yahweh, God of justice and mercy. This is as basic to the theology of the New Testament as to the Old Testament. The New Testament is evidence of the early church to grapple with the implications of the new life in Christ – clarifying belief, determining appropriate behaviour, facing up to specific problems. Not least among the specific problems that arose was how to cope with failure among the believers, and wilful deviation from the commonly held norm of understanding within the community.

- We see this in the Parable of the Prodigal Son, where Christ draws upon the teaching of both Hosea and Amos.
- St. Paul for example, in the Epistle to the Romans, in his interpretation of the atonement, demonstrates how both the justice and mercy of God were in action.

What is incontestable from the New Testament material is the primacy of the agape – love principle. **The love of God for what God has created and the love of human beings for God.** Followers of Jesus are called to love one another as Jesus loves them (John 13 & 1 John 3). This they seek to do as they live by the grace of God and the empowering of the Holy Spirit, in conformity to the teaching and the earthly example of Jesus.

Consequently, disharmony within the community was bound to be a serious matter. Euodia and Syntyche are urged to agree with each other (Philippians 4: 2-3). But there is also realism in the urge to agree: *'if it is possible, as far as it depends on you, live at peace with everyone'* (Romans 12: 18). Where there is disharmony the desired solution is reconciliation. There was

a need to work towards a mutually acceptable resolution of the disagreement or dispute. This remains the preferred manner for handling disharmony and disputes to the present day.

Wherever possible the Scripture look towards a private reconciliation. If this proves to be unattainable, then individual fellow believers should try to assist. Failing this, the wider community should become involved. And only if a sister or brother in dispute resists the guidance of the community, expulsion, regretfully, should be considered (Matthew 18: 15 – 17, 1 Corinthians 5. 1 – 5).

Throughout, the understanding is that discipline will be *'in-house'*. Recourse to the secular courts for settling disputes and for exercising discipline amongst believers is seen as unnecessary and inappropriate. These are internal matters for the believing community (1 Corinthians 6: 1 – 6). Ideally, fellow Christians should learn to forgive each other, as Christ forgave them (Colossians 3: 13).

But, inevitably and sadly occasions will arise when reconciliation is not achieved. Then it becomes necessary for the dispute to be adjudicated. And I'm aware of a series of fault-lines running between the ecclesiology, and a legal understanding arrived at from a secular viewpoint.

Discipline was exercised in the hope that it would encourage repentance; a *'coming to their senses'* and a *'putting right'* of that which is wrong. So, even in the most serious cases, there was always the longing for a fresh commitment to the way of Christ, and the hope that it might be possible to move on from the past.

5. The Christian Tradition

The Canons trace their history back down the centuries, through the developing Canon Law for Western Christendom. Our present Canons continue to reflect the same disciplinary concerns.

The evolving disciplinary structures of the church of the New Testament continued to develop down the centuries. Before AD 310 the focus was mainly on the internal church life. After Constantine's conversion, it expanded to cover a far wider area of jurisdiction. Marriage and family relationships came under ecclesiastical jurisdiction, and other areas too. At times this wider responsibility grew, and other times it was restricted.

Alongside the developing discipline of the church came a growing organisational structure. It was not long before the bishop was assisted by officers and by a court. Both adjudication and the enforcement of decisions developed.

The distinguishing of clergy as a distinct group disciplined in a particular way also developed. In the early sixth century, for instance, Finnian of Clonard, in one of the earliest methodical penitentiaries, distinguishes quite sharply between the fairly mild penance that the laity can be given, and the more demanding exercises considered appropriate for clergy. It is this continuing and refining response to discipline down the centuries that is the basis of Church's Canon Law.

6. Protection of Clergy

The Canons try at best to cover all areas of church life and those who serve it. Alongside the protection afforded to the church and to Holy Orders, we need also to be concerned with protecting our clergy. Many are making the sacrifices of limited remuneration and living in

housing not their own. So, allegations of an offence can create a serious crisis for them and their loved ones. Consequently, the church has an obligation to protect its clergy from frivolous, spiteful and maliciously motivated accusations. Especially this is so because clergy are particularly vulnerable to rumour and slur.

The innocent must feel secure, and investigations, when necessary, must be handled sensitively, fairly, and promptly. To fall short in these objectives would render any system of discipline weak, uncertain and ineffective.

Enshrined within the procedures there will need to be the best practice available. As part of our society, the church must co-operate within the secular authorities wholeheartedly. There's no place for cover-ups where the law of the land or the concerns of our society are relevant. Nor, when exercising its own internal discipline, would it ever be acceptable for the church to offer its clergy procedures of discipline that were less generous or less fair than those which they could reasonably expect in a secular court of law.

Ecclesiastical practice should be a model of best practice, interlaced with a desire to seek reconciliation where this is possible. Those accused of an ecclesiastical offence should be expected to be treated firmly and fairly, yet with graciousness and mercy.

So, it is clear that from Scripture, from the pages of Christian history, and in historical formularies of the Anglican Church that those in Holy Orders and positions of leadership are required to be a disciplined group of people, open to discipline if and when they fall short of the standards that they exemplify and by which they live.

As we gather here, we are aware of the many challenges that face the church locally and worldwide. Amongst the many challenges, there are matters of (ill) discipline. I pray that we be:

channels and instruments of peace;
where there is hatred, let us sow love;
where there is injury, pardon;
where there is doubt, faith;
where there is despair, hope;
where there is darkness, light;
and where there is sadness, joy.

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