

Church law as an ecumenical discipline

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In explaining the contents of 'receptive ecumenism' the background paper for this conference speaks about 'the reality of the contemporary ecumenical moment – wherein the hope for structural unification in the short-medium term now appears unrealistic – and the abiding need for the Christian churches to walk the way of conversion towards more visible structural and sacramental unity'. It also expresses the conviction 'that further ecumenical progress will become possible if – and only if – rather than asking what other traditions might need to learn from us, each tradition instead takes the creatively challenging step of examining what it both needs to learn and can learn (or 'receive') with integrity from its others'.

It is this view of the ecumenical movement as a 'learning process' that has been guiding my involvement in the ecumenical movement for many years now. A few years after I had completed my doctoral thesis¹ in the field of roman catholic ecclesiology – which strengthened my conviction that ecclesiology needs to be dealt with in an ecumenical context –, I was appointed ecumenical secretary of my church, at that time the Reformed Churches in the Netherlands, which in 2004 united with two other churches into the Protestant Church in the Netherlands. My theological understanding of ecumenism was deepened by an important introduction into ecumenical theology that was published in 1993 by three leading Dutch theologians, Bert Hoedemaker, Anton Houtepen and Theo Witvliet. Its title, *Oecumene als leerproces*² (*Ecumenism as a learning process*), fully reflects its basic contents. Unfortunately it has never been translated into English, but it provides a perspective of present actual challenges that comes very close to the 'receptive ecumenism' strategy underlying this conference.

Around the same time (1993) I was appointed professor of church law in a 30% part-time position, continuing to serve as an ecumenical secretary for the main part of my time, in which capacity I kept focusing on ecclesiological issues. From the very beginning it struck me that there was hardly any connection between both my working fields, church law and ecumenism. In the ecumenical/ecclesiological arena church law issues are often being seen as annoying: ecumenical initiatives would often be frustrated by legal opinions of church bureaucrats systematically neglecting the challenging and renewing potential of such initiatives. And there is a vivid awareness of the fact that some of the most frustrating splits in the Dutch churches in history – of course, you know that my country has quite a record in this respect – are rooted in conflicts about church law rather than in relevant doctrinal differences.

On the other hand, in taking my responsibility in the legislative task of our synod, I have often been confronted with a lack of interest and expertise among my colleagues in the church law commission with regard to the possibility of using legislation in order to bring our Reformed

¹ L.J. Koffeman, *Kerk als sacramentum. De rol van de sacramentele ecclesiologie tijdens Vaticanum II*, Kampen 1986.

² Bert Hoedemaker, Anton Houtepen, Theo Witvliet, *Oecumene als leerproces. Inleiding in de oecumenica*, Zoetermeer 1993 (2005³). The ecumenical movement is among others characterized as 'a process of re-calibrating and re-defining Christian faith, and re-arranging church and interchurch organization, in which (process) the fundamental discussion on Gospel and world presents itself in a new way' (265).

tradition closer to other traditions. In other words: to learn from other traditions. Church law issues are being seen as by nature 'internal affairs' of the church.

This is not only true in church life, but the same goes for academic theology, I am afraid. For all kinds of historical and theological reasons there still is a major gap between ecclesiology as a full-blown theological discipline and the academic study of church law, i.e. the theological analysis and development of the norms regulating church structures and legal relations within churches, as well as their mutual and external relations. This gap is especially evident in protestant circles.

A negative attitude regarding formal law is not unusual, especially within the Reformed family. It is not less than a neuralgic aspect of church life – and theology. The famous words of the German Lutheran Rudolph Sohm about the incompatibility of church and law – “The essence of church law is in contradiction to the essence of the church”³ – are still reflected in an ongoing uneasiness (to say the least) about any combination of church and law. Within my own tradition there has hardly been any theological reflection on church law until very recently (in the framework of the aforementioned unification process); traditionally the only more or less theological approach was a historical one: church law used to be taught by professors of church history.

In a wider context we see different pictures. For instance, in Rudolf Sohm's Germany academic church law studies are flourishing,⁴ but mainly from a juridical perspective: church lawyers are usually lawyers, and not theologians. In many seminaries in the Anglo-Saxon protestant world church law is not an academic subject at all: often a (retired) minister, who can hardly be seen as part of the faculty and has no responsibility in terms of research at all, will be asked to share some experiences in the practical application of the church order with future ministers in the final stage of education – and that's it.

Of course, the situation is different in those traditions based on canon law. Roman Catholic faculties for Canon Law like Louvain (Belgium), although small in number and size, produce interesting materials. The same probably goes for Anglican institutions, but I am not fully aware of that specific context yet.

In 2004 my academic appointment was changed from a 30% position into a 80% position. This increase of time for academic study made it possible for me to really try and make a small contribution to bridging the gap between ecumenical ecclesiology and the study of church law. In a few weeks I hope to present a theological introduction into church law,⁵ connecting basic ecclesiological issues as dealt with in bilateral and multilateral (Faith and Order) dialogues with church law dilemmas and issues. The experience from my participation in co-drafting the Church Order of the Protestant Church in the Netherlands – between 1995 and 2003 – has helped me a lot to identify pivotal issues.

Hans Dombois

Decades ago, it was the German church law expert Hans Dombois who, in three volumes,⁶ presented his view of church law as 'ecumenical' in nature. In my own theological thinking I still draw upon the wealth of his juridical, philosophical and theological thoughts. Let me share with

³ “Das Wesen des Rechts steht mit dem Wesen der Kirche im Widerspruch”, R. Sohm, *Kirchenrecht I. Die historischen Grundlagen*, Leipzig 1892, 1.

⁴ Cf. the quarterly *Zeitschrift für Evangelisches Kirchenrecht*.

⁵ Leo J. Koffeman, *Het goed recht van de kerk. Een theologische inleiding op het kerkrecht*, Kampen 2009.

⁶ H. Dombois, *Das Recht der Gnade. Ökumenisches Kirchenrecht (Law of Grace. Ecumenical Church Law)*, Vol. I, Bielefeld 1961, Vol. II, Bielefeld 1974, Vol. III, Bielefeld 1983

you some of his basic contributions. As we will see, in many respects his views reflect ecumenical insights which are still valid.

The subtitle of Dombois' *opus magnum*, 'ecumenical church law', is programmatic. His first point of departure is the conviction that church law *is* ecumenical in nature. Ecumenical church law is not just a matter of subjective idealism and personal commitment to ecumenical consensus. In a summary of his views he speaks about 'the objective ecumenicity of church law as a historical fact'.⁷ This is true, he says, because of the undisputable fact that unity is not only something we seek, but – to quote the Faith and Order document *The Nature and Mission of the Church* – the 'essential oneness ... belongs to the very nature of the Church, and is already given to it in Jesus Christ'.⁸ This is the thrust of what we confess with the *Nicene Creed*: 'Et (credo) unam sanctam catholicam et apostolicam Ecclesiam'. The confession of the one church challenges us to find corresponding institutional ecclesial forms of visible unity. We are 'called to be the one church'.⁹

There is a second point of departure, equally important. According to Dombois we have to work from the conviction that the Holy Spirit has entered into our human history, evoking historical manifestations. The church is among these manifestations, living in the power of the Spirit. The relevance of this principle is that it determines the dynamics of church history. Church history, church law and ecumenism have a process character. In church law and in ecumenical life churches are involved in a movement that is rooted in the mission of the Lord and oriented towards the Kingdom of God to come.

As far as ecumenism is concerned we may easily recognize this characterization of the ecumenical movement as a fruit of the work of the Holy Spirit. In a comparable way the Second Vatican Council could say: "[T]he Lord of Ages (...) has been rousing divided Christians to remorse over their divisions and to a longing for unity. Everywhere large numbers have felt the impulse of this grace, and among our separated brethren also there increases from day to day the movement, fostered by the grace of the Holy Spirit, for the restoration of unity among all Christians. This movement toward unity is called 'ecumenical'."¹⁰ And the Canberra Statement on *The Unity of the Church: Gift and Calling* says: "We acknowledge with gratitude to God that in the ecumenical movement the churches walk together (...). This has allowed them to recognize a certain degree of communion already existing between them. This is indeed *the fruit of the active presence of the Holy Spirit* in the midst of all who believe in Christ Jesus and who struggle for visible unity now".¹¹

But of course, the interesting contribution in Dombois' work is the connection he makes between ecumenism as a Spirit-led process and church law as a similar process. He does not operate with the aforementioned quite popular opposition between law and Spirit (Sohm!), but takes the opposite stand, in order to challenge the churches to see church law as a full-blown theological matter as well.

I am very much aware of the fundamental theological questions Dombois raises here. In a common publication of the members of a Dutch Reformed-Catholic Dialogue Commission they say: "A further reflection on the relation between Spirit and Church (in connection with the relation between Spirit and Christ) within the more comprehensive context of the relation of Spirit and history is imperative in the present phase of the ecumenical dialogue".¹² Is it possible to

⁷ Dombois, H. (1979), 'Ökumenisches Kirchenrecht heute' in: *Zeitschrift für Evangelisches Kirchenrecht*, 24 (1979), 225-249, 230.

⁸ NMC, par. 53

⁹ Cf. WCC, Porto Alegre 2006.

¹⁰ *Unitatis Redintegratio*, par. 1; italics mine.

¹¹ *The Unity of the Church: Gift and Calling*, par. 1.3; cf. NMC, par. 15; italics mine.

¹² M.E. Brinkman, H. Witte (ed.), *From Roots to Fruits. Protestants and Catholics Towards a Common Understanding of the Church*, Geneva 2000², 189; an English translation of the final report of the Reformed-Catholic

connect the Holy Spirit to historical (ecclesial) phenomena and at the same time avoid the risk of putting those phenomena more or less beyond critical theological research? If so, how?

This brings me to a second relevant contribution of Dombois. He underpins his views by a thorough theological analysis of church history. His leading question is: how is it possible that practically all churches confess the oneness of the Church, and at the same time seem to be able to live with actual divisions between and within those churches? Of course, many cultural, political and also theological reasons for schisms can be identified through historical research. But Dombois' question has a different thrust: what kind of ecclesiology is behind this possibility to combine the confession of unity with the practice of divisions? In answering this question Dombois presents a particular view of the 'logic' of church history. He sees three phases in church history, to a high degree corresponding with three millennia.

Church law as far as it existed during the first millennium of the Christian church was 'epicletic' in nature: it was not based on an explicit and elaborated theological concept of 'church' in terms of systematic theology (as we know ecclesiology as a separate *locus theologiae* was not developed in the old church), but the church was a unity in the Holy Spirit, expressed in liturgy, the doctrine of the Trinity and Christology, and in episcopal office, the three together (liturgy, doctrine, episcopal office) building a self-evident 'historical substructure'.

In the early Medieval time a crisis in terms of legitimacy and identity changes the picture dramatically. It is corruption and fraud that makes it necessary to develop a theological view of the essence of the Church. Church law is being based on such ecclesiological principles now. Dombois characterizes this second type of church law as 'transcendental'. Theological views of the Church as a faith issue are linked with legislation, in order to give them legitimacy. This is first of all the case, after 1054, within the still undivided western church (in a sacramental ecclesiology), and then, in opposition to this development and its practical consequences, from different perspectives in the Reformation. Here also theology, concentrated in specific points of departure for ecclesiology,¹³ is used to legitimize decisions in terms of church policy, resulting in a transcendental type of church law. In other words: church law becomes part and parcel of apologetic theology.

Now the point is that at the verge of the third millennium it is – or at least should be - clear that a transcendental type of church law is no longer an option: it has lost its theological legitimacy, and it is no longer convincing. If church law, in order to prove its validity, only refers to specific elements of a particular confessional tradition, it automatically excludes itself from academic discourse and therefore loses its theological relevance. Church law can only be 'ecumenical' today! At the same time Dombois stresses the need to take up again some of the major elements of first millennium epicletic church law that as a kind of undercurrent continued to play a role through the second millennium, and especially so in liturgy. Ecumenical church law has to be rooted in eucharistic ecclesiology, and can therefore also be characterized as 'liturgical church law' (cf. Karl Barth). This concurs with a broadly accepted ecumenical insight: "The Church is the communion of those who, by means of their encounter with the Word, stand in a living relationship with God, who speaks to them and calls forth their trustful response; it is the communion of the faithful. (...) Thus the Church is the creature of God's Word (*creatura Verbi*), the Gospel, which, as a living voice, creates and nourishes the Church throughout the ages. This divine Word is witnessed to and heard through Scripture. Incarnate in Jesus Christ, the Word is

Dialogue Commission, with some international comments, was recently published in *Exchange. Journal of Missiological and Ecumenical Research*, 37 No. 4 (2008).

¹³ Dombois focuses on the Lutheran and the Reformed tradition, the first taking 'the proclamation of the Gospel', the second 'election and sanctification' as its point of departure. In my view these views may be debatable from church history perspectives, but that does not necessarily affect his basic views.

testified to by the Church and proclaimed in preaching, in Sacraments, and in service”.¹⁴ Or, with the report of the most recent Reformed-Roman Catholic dialogue: “Sharing word and sacrament in the presence of the Triune God, the church discovers anew its own nature as a communion and becomes what it is: the people of God, the body of Christ and the temple of the Holy Spirit”.¹⁵

In my view this is a convincing position of Dombois. First of all, it rightly unmask and rejects all efforts to use church law as an apologetic instrument. As the Second Vatican Council stated clearly in its famous ‘*subsistit in*’,¹⁶ full identification of the *una sancta* with any specific church structure is no longer acceptable. Secondly, it reminds us of the need to maintain or restore the links between ecclesiology and the academic study of church law, to prevent docetic forms of ecclesiology on the one hand and legal pragmatism on the other hand. And thirdly, it points to the need to do so in an ecumenical setting.

As I said before, I have tried to develop a theological introduction into church law, based on these insights of Dombois. In my book I have made an attempt to link a large number of issues in church law with the results of ecumenical dialogues, especially from Faith and Order – from BEM to NMC and CBOC – and from bilateral dialogues, both from an international – esp. WARC/RCC, LWF/RCC – and a national context. I have tried to use broadly accepted ecumenical insights for a critical assessment of church law regulations, especially but not exclusively from the Church Order of my own church, the Protestant Church in the Netherlands. Before I close this contribution with a few examples of the way it works, I need to make two additional clarifications.

First, in my view the complementarity of (confessional) church law traditions is a consequence of seeing church law as ecumenical in nature. All churches fundamentally suffer deficiencies in terms of legal structures,¹⁷ and they need each other to become aware of this and to be able to develop ecumenically sustainable structures. Complementarity is not the same as overlap.¹⁸ On the contrary, e.g. complementary colours are different but they need each other to cover the full spectrum of the colour white. Together, i.e. *only together*, they can be regarded to be ‘complete’. In a similar way churches need each other.

Secondly, we need to be aware of the specific nature of law as an academic discipline if compared with theology. Law has its own logic, its own method and rules. Let me again take a metaphor from natural science. One could perhaps use here the image of an electrical transformer which e.g. transforms an electric current of 220 volts to 12 volts. In such a transformer there are two different coils side by side. The important thing is that they should not be linked (otherwise there would be a short circuit). But the electromagnetic field of one coil nevertheless gives rise to a current in the other. How exactly that comes about has to do with the specific properties of the two coils. In other words: the ecclesiological debate and the debate in church law should be kept apart, but what takes place in the first debate has its consequences in the second. Part of the specific logic of law is that it is impossible to develop one church structure that would be able to include all theologically legitimate and in a way necessary aspects. This only stresses the issue of complementarity.

¹⁴ NMC, par. 10

¹⁵ *The Church as Community of Common Witness to the Kingdom of God*, par. 165

¹⁶ *Lumen Gentium*, par. 8

¹⁷ Cf. DOMBOIS 1974, 87vv.

¹⁸ Cf. L.J. Koffeman, ‘Protestantism and Roman Catholicism, two complementary traditions?’, in: P.N. Holtrop e.a. (red.), *Passion of Protestants*, Kampen: Kok, 2004, 51-71.

Finally, let me give you an example of how this mutual relationship between ecumenical ecclesiology and church law issues works.

Churches in the Reformed tradition often struggle with the issue of ordained ministry. At least this is true for the Protestant Church in the Netherlands, in terms of constituency predominantly rooted in the Reformed tradition, but in terms of confessional basis both Reformed and Lutheran. The former church orders of the two Reformed denominations which united into the PCN did not know the term 'ordination' or 'ordained'. As a consequence, a common denominator 'office' (Dutch: 'ambt') was used for the ministries of 'minister' ('minister of the Word', pastor), elder and deacon. In this tradition the equality of these three offices is pivotal. The former Lutheran church order did use the term 'ordained ministry' in order to distinguish between the minister on the one hand and on the other hand the 'auxiliary ministries' of elder and deacon, but also church steward (responsible for finances etc.), church musician and others. The church order of the PCN had to bring those two traditions together. It did so by starting from a strong theological statement, recognizably rooted in the Lutheran tradition: "To focus the congregation on salvation and to keep it to its call in the world the public office of Word and Sacrament was given on the part of Christ".¹⁹ As you may know the 'public office of Word and Sacrament' as common in the Lutheran tradition is not synonymous with ordained ministry, but it basically points to the common responsibility of the church. The next sentence says: "With a view to this ministry the church distinguishes the office of minister, the office of elder, the office of deacon as well as other ministries in church and congregation". In my view it is a positive aspect of this formulation that it suggests a freedom of the church to 'distinguish' specific offices; in a way this keeps other ecumenically inspired options open. But at the same time the text maintains the three 'offices' as equal, and it does not answer the question whether the office of the minister is supposed to be the ordained ministry in terms of a growing ecumenical consensus. I think that a stronger orientation towards ecumenical ecclesiology would have helped avoid a lot of practical questions which are still there, e.g. regarding the way elders and deacons understand their responsibilities.

In a similar way dealing with church law from an ecumenical perspective is important to make progress in quite a few other questions that are on the agenda of the church. To give you an impression:

- discussions on the role of the minister, and for instance on the way collegiality works need a clearer view of what 'episkopè' is; traditional protestant negative feelings regarding an episcopal office too often hamper an open and fruitful internal dialogue;
- in order to deal with the tension between the so-called 'independence' of the local congregation (for some Reformed the core issue of Reformed ecclesiology!) and the need to strengthen certain regional and national structures, ecumenical findings like those in *The Church Local and Universal* (Joint Working Group WCC-RCC) have to some extent already proved to be helpful; more work has to be done in this respect;
- there is a new and growing awareness of the missionary character of the church, but so far the PCN church order does not really reflect this; here a more intensive reception of ecumenical thinking as condensed in *The Nature and Mission of the Church* would be advisable;
- many unclear and unsolved questions exist with regard to the role of our confessional tradition and its consequences in terms of doctrinal discipline; here ecumenical thinking regarding 'Tradition and traditions' and hermeneutics could be helpful.

In my book I deal with many other issues like these. In all of these questions it is helpful to strengthen the input from ecumenical theology into discussions and decision making in terms of church law. At the same time ecumenical ecclesiology could take up the issue of the institutionality of the church, including its legal aspects, more than it has done so far.

¹⁹ Art. 5-1 Church Order PCN.