

THE EVOLUTION OF CANON LAW IN THE CHURCH OF ENGLAD:  
FROM THE ACT OF SUPREMACY TO *THE CANONS OF THE CHURCH OF ENGLAND*<sup>1</sup>

[ES] *La evolución del derecho canónico de la Iglesia de Inglaterra. Desde el Acto de Supremacía hasta la moderna The Canons of the Church of England*

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*Abstract:* The study explores the axiological, theological, and doctrinal underpinnings of Canon Law in the Church of England, alongside the historical development of Anglican legal philosophy. It includes references to state law, acknowledging its impact on the Anglican community. The article culminates in a historical analysis of modern canon law formation within the *Canons of the Church of England*. It concludes by emphasizing the importance of ecclesiastical communities having autonomy in shaping their own laws, free from external influences.

*Key words:* canon law; historical aspects of regulation; Church of England; ecclesiastical law; The Act of Supremacy.

*Resumen:* El estudio presenta los fundamentos axiológicos, teológicos y dogmáticos del derecho canónico de la Iglesia de Inglaterra, así como los aspectos históricos de la formación del pensamiento jurídico anglicano. Cuando fue necesario, se hicieron referencias a la legislación estatal, que también afecta a la Comunión Anglicana. El elemento final del artículo es una discusión histórica de la formación de los cánones modernos de la Iglesia de Inglaterra. El artículo concluye con un resumen con conclusiones, entre ellas la necesidad de que las comunidades eclesiales tengan derecho y libertad para configurar su propio derecho sin factores externos.

*Palabras Clave:* derecho canónico; aspectos históricos de la reglamentación; Iglesia de Inglaterra; derecho eclesiástico; Acto de Supremacía.

## 1. INTRODUCTION

The establishment of the Anglo-Saxon common law system traces back to the latter part of the 12<sup>th</sup> century when Henry II Plantagenet formalized the legal framework in the Kingdom of England, elevating it to the status of common law, thereby creating a unified legal system across the realm. During this period, Catholic England also operated under a sophisticated canon law system alongside secular law, resulting in occasional conflicts with ecclesiastical authority. Essentially, prior

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to the Anglican Reformation, the ecclesiastical canon law coexisted with secular law, a unique occurrence in Europe.

Despite the global adoption of the Anglo-Saxon common law system, the Church of England, as an integral part of British governance, maintained its own canon law – a distinct body of laws. A contemporary embodiment of this blend of Anglo-Saxon and canonical legal traditions is found in the *Canons of the Church of England*, which serve as the Church's internal legal framework, governing its practices and procedures.

This work aims to explore the underlying values that form the basis of Church of England canon law, along with the historical evolution of Anglican legal principles. Where applicable, references to secular law, which also influence the Anglican community, have been made. This article culminates in a historical analysis of the development of contemporary canon law within the *Canons of the Church of England*, followed by a summary and conclusions.

### 1.1. Fundamentals of Canon Law in the Church of England

The 16<sup>th</sup> century stands out in history as the era of the Reformation, with Martin Luther as its undeniable forerunner. Concerning canon law, Luther advocated for significant changes, challenging the notion of law within the Church as a product of hierarchy<sup>2</sup>, rather than rooted in theological foundations. In 1520, he even went as far as to burn books of Catholic canon law, along with the papal bull *Exsurge Domine*<sup>3</sup>. Luther's reform proposals aimed to strip away any “human interference” by transforming the law from what he deemed *opus Satanae* into a genuine tool for salvation<sup>4</sup>.

The Anglican Reformation took a different path from Luther's radical ideas, recognizing the importance of adopting a legal framework for the Church to carry out the mission initiated by Jesus Christ. In the early stages of the Reformation in England, King Henry VIII, despite his ongoing dispute with the papacy over his remarriage, initially aimed to uphold Catholicism, acknowledging

<sup>2</sup> Cf. MARTINA, G., *Storia della Chiesa da Lutero ai nostri giorni. L'età della Riforma*, Rome 2013, pp. 128-129.

<sup>3</sup> Cf. LEO X, «Bulla *Exsurge Domine*», 15.06.1520, in DS. 1467-1472. Polish text in *Breviarum Fidei. Wybór doktrynalnych wypowiedzi Kościoła*, ed. BOKWA, I., Poznań 2007, pp. 173-177.

<sup>4</sup> Cf. CANTTANEO, A., *Fundamenti Ecclesiologici del Diritto Canonico*, Venezia 2011, p. 37.

the authority of the Holy See in church matters<sup>5</sup>. However, over time, the king's stance evolved<sup>6</sup>, thus eventually leading to the schism<sup>7</sup>.

Even after the Reformation, the Church of England has always recognized that its legal framework is rooted in the essence of the Church of Christ, as defined by doctrine and subsequent legislation, following the model set by the Catholic Church<sup>8</sup>. The reformist rejection of papal authority and the significant alterations to liturgical books concerning worship did not disrupt the established administrative structure of the Church, which had long operated within the framework of Catholic canon law<sup>9</sup>.

In Anglican legal doctrine, the divine origin of church law is emphasized. Moreover, “the development of a theology of church law is predicated on the idea that the law of church has a theological basis and purpose”<sup>10</sup>. However, the canon law held by and existing within the Church is not granted absolute authority; it operates within defined boundaries and is determined by the Church's role in God's plan<sup>11</sup>. Therefore, M. Hill outlines the following connections between canon law and theology:

*“1. Church law and theology have the same ends: to assist the church in its mission and witness to Christ. 2. They are the servant of the church. 3. Theological inquiry is intellectual (about belief), whereas law is a practical (about action). 4. Law is connected to theology by virtue of its sources: the will of the church and the will of God. 5. The nature of the church is a theological study that molds our view of church law. 6. Church law is shaped by and shapes ecclesiology”<sup>12</sup>.*

Undoubtedly, the axioms pertaining to the legal and theological framework within the Church of England bear a striking resemblance to those formulated within Catholic doctrine. Anglicans recognised the juridical provenance of various legal constructs, including ecclesiastical law itself, and aspired to apply canonical remedies to the specific circumstances arising after Henry VIII's schism<sup>13</sup>.

<sup>5</sup> Cf. MARTINA, G., *Storia della Chiesa da Lutero ai nostri giorni. L'età della Riforma*, cit., p. 159.

<sup>6</sup> LOADES, D., «Relations between the Anglican and Roman Catholic Churches in the 16th and 17th Centuries», in *Rome and Anglicans. Historical and Doctrinal Aspects of Anglican-Roman Catholic Relations*, ed. AVELING, J. C. H., LOADES, D. M., MCADOO, H. R., Berlin-New York 1982, p. 7.

<sup>7</sup> Cf. HUGHES, P., *The Reformation in England. I. The King's proceedings*, London 1950, pp. 160-161.

<sup>8</sup> Cf. OMBRES, R., «Why then the Law?», in *New Blackfriars* 55 (1974) 650, p. 301.

<sup>9</sup> Cf. GARBETT, C., *The claims of Church of England*, London 1955, p. 15.

<sup>10</sup> HILL, M., «Legal Theology», in *Journal of Law and Religion* 32 (2017) 1, p. 59.

<sup>11</sup> Cf. *The Canon Law of the Church of England. Being the Report of the Archbishops' Commission on Canon Law; together with Proposal for a Revised Body of Canons; and a Memorandum 'Lawful Authority' by the Honourable Mr Justice Vasey*, London 1947, p. 3.

<sup>12</sup> HILL, M., «Legal Theology», cit., p. 59.

<sup>13</sup> Cf. DIAPER, P. A., *Law and Religion in England*, pp. 111-112.



Significantly, notwithstanding alterations in Anglican canon law, leaders persisted in employing the traditional term *Ecclesia Anglicana* for years to come<sup>14</sup>, including in communications addressed to the monarch. This practice not only attests to a commitment to established conventions but also underscores the protracted nature of reformatory endeavours. Despite contemporary scholarly inclinations aligning Anglican legal precepts with those of Catholic canon law, it should be stated that the Church of England exhibits a distinctly Protestant and reformed character, particularly in its legal-canonical orientation<sup>15</sup>.

The legal framework within the Church of England facilitates the Church's mandate of aiding individuals in their journey of faith and life, which is bestowed as a divine gift by Jesus Christ, and in discovering the essence of genuine happiness. In the Anglican community law is secondary to the spiritual mission of the Church, which bears resemblance to the Catholic doctrine. This principle is referred to as *salus animarum* in the Catholic canons and the *meaning of true happiness* in the Anglican doctrine<sup>16</sup>.

As highlighted before, Christ did not institute an extensive set of regulations concerning the Church's mission; instead, the Church, drawing from the directive imparted to the Apostles, established requisite principles for guiding the Christian existence. These principles, informed by rationality and the influence of divine grace, consistently defer to their source, namely God, His essence, and the Revelation encapsulated in Holy Scripture and Patristic Tradition<sup>17</sup>. Consequently, the Church of England acknowledges that the laws formulated within the faithful community may not always directly correspond to the precepts delineated in Revelation, yet they are intended to emanate from Revelation as the cornerstone of the Church and its legal framework<sup>18</sup>.

## 2. HISTORICAL EVOLUTION OF THE LAW OF CHURCH OF ENGLAND

### 2.1. The period of the church in England

The evolution of canon law within the Church of England spans three distinct historical stages, each intricately linked to the development of Catholic canon law prior to the Anglican schism. The

<sup>14</sup> GARBETT, C., *The claims of Church of England*, cit., p. 15: "It is also significant that before, during and after the breach with Rome successive Archbishops used in their legal documents the same term *Ecclesia Anglicana*".

<sup>15</sup> Cf. Ivi., p. 19.

<sup>16</sup> *The Canon Law of the Church of England* ..., cit. p. 3.

<sup>17</sup> Ibid.

<sup>18</sup> Cf. DOE, N., «Canon law and Communion», in *Ecclesiastical Law Journal* 6 (2002) 30, pp. 243-244.

first period, termed the *jus antiquum* era, extends from the time of Jesus Christ's ministry to the early centuries of Christianity<sup>19</sup>, culminating in the publication of the *Decretum Gratiani*<sup>20</sup> in 1140. During this stage, ecclesiastical law was formulated by various individuals into collections of laws with varying degrees of doctrinal significance<sup>21</sup>. The *Decretum Gratiani* (*Decretum discordantium canonum*) holds particular significance as the first comprehensive compilation of Church laws<sup>22</sup>, marking a pivotal moment in reconciling and systematizing diverse legal norms. This provided a foundational framework for subsequent developments in canonical law, Roman law, and theology. The following period, known as the *ius novum* era, saw legal provisions derived from papal collections of laws<sup>23</sup>, signifying a shift towards a more standardized and public legal framework compared to earlier centuries<sup>24</sup>. Notably, the first official compilation of post-Reformation Church laws, published in 1582<sup>25</sup>, served as a key reference point for Anglican canonists, drawing from Roman canon law, English customary law, and the provincial law of the Church in England<sup>26</sup>. The final stage, spanning from the Reformation to the present day, represents an era of *mixed sources*<sup>27</sup>, characterized by a synthesis of diverse legal traditions and influences.

While Anglicans initially drew upon Catholic Church principles for the foundations of both the Church's existence and its legal framework, they formulated their own interpretation of canon law influenced by the reform movement. However, as previously mentioned, Martin Luther's calls for the abolition of law within the ecclesiastical community were not accepted. C. Garbett contends that:

*“The Reformation brought freedom to the individual as well as to the Church. This is not unfettered freedom, for he authorized minister of the Church only receives his commission after giving solemn undertakings both in the matter of doctrine and of worship, and the layman too is bound to accept loyally the faith and the rules of the Church to which he belongs. But he has freedom to enquire into the grounds of the faith he has accepted, to ask the reasons for it, and to request that it should be stated in an intelligent form to satisfy thoughtful men and women”<sup>28</sup>.*

<sup>19</sup> Cf. HARDY, T., *Catholic or Roman Catholic? Twelve letters to one unsettled in the English Church*, London 1916, pp. 28-29.

<sup>20</sup> *Corpus Iuris Canonici. Decretum Magistri Gratiani*, vol. I, ed. FRIEDBERG, A., Graz 1959.

<sup>21</sup> Cf. *The Canon Law of the Church of England*...., cit., p. 6.

<sup>22</sup> Ibid.

<sup>23</sup> Cf. VETULANI, A., DEBIŃSKI, A., «Corpus Iuris Canonici», in *Leksykon prawa kanonicznego*, ed. SITARZ, M., Lublin 2019, pp. 456-464.

<sup>24</sup> Cf. *The Canon Law of the Church of England*...., cit., pp. 26-42.

<sup>25</sup> Cf. CATTANEO, A., *Fondamenti ecclesiologici del diritto canonico*, cit., p. 36.

<sup>26</sup> Cf. HILL, M., *Ecclesiastical Law*, Oxford 2018, p. 6.

<sup>27</sup> Cf. DIAPER, P. A., *Law and Religion in England between 1532-1994: The Legal Development of the Established Church, Religious Toleration and Conscientious Objection*. Pontificia Universitas Sanctae Crucis, Facultas Iuris Canonici, 2000, pp. 156-157.

<sup>28</sup> GARBETT, C., *The claims of Church of England*, op. cit., p. 19.



This indicates that the Church of England endeavoured, even during the Reformation era, to stay within the parameters of the law of the Church of Christ, albeit with an increased emphasis on the discretionary evaluation of certain doctrinal and moral matters<sup>29</sup>. Similarly, the law, construed as a means rather than an end of the Church's objectives, was intended merely as a stimulus for compliance with specific regulations<sup>30</sup>.

## 2.2. The differentiation of canon law systems

The inaugural intervention in canon law reform was initiated by a Commission appointed on behalf of successive monarchs of the Kingdom beginning in 1533<sup>31</sup>. According to M. Hill, both under the reign of Henry VIII and Edward VI, attempts to reform canon law proved unattainable<sup>32</sup>. It was not until 1571 that the *Reformatio Legum Ecclesiasticarum*, a compilation of post-reformation canons, was established. This code primarily aimed to nullify the tenets outlined in the *Corpus Iuris Canonici* and other valid yet provisional statutes. The document, sanctioned by one of the Anglican archbishops, addressed the restructuring of ecclesiastical legal norms and was structured into titles, further segmented into smaller editorial units such as chapters and paragraphs<sup>33</sup>. Nevertheless, the technical division implemented bore little resemblance to the preceding compilations of decrees and ecclesiastical legislative documents. Notably, the project afforded considerable attention to proceedings within ecclesiastical courts, likely due to the elimination of the option to appeal to the Holy See<sup>34</sup>.

At a particular juncture in the Anglican Reformation, canonical law took on a diminished significance and complexity within the landscape of reform. Although Thomas Cranmer<sup>35</sup> personally formulated a proposal for reformative canons, they, like the aforementioned acts, failed to be enacted. Subsequently, the reformed Church of England saw the inception of its new legal framework in 1603

<sup>29</sup> OMBRES, R., «Ecclesiology, Ecumenism and Canon Law», in *English Canon Law*, ed. DOE, N., HILL, M., OMBRES, R., Cardiff 1998, p. 54.

<sup>30</sup> Cf. GARBETT, C., *The claims of Church of England*, p. 19: “Where the Roman Church says ‘you must’ the Church of England more often says ‘you may’. It leaves much to the discretion of an individual. For instance it insist on the acceptance of the Bible as the inspired word of God, but the individual is not bound to any one special theory of inspiration. The clergy are given freedom in respect of marriage”.

<sup>31</sup> *Act for the Submission of the Clergy and Restraint of Appeals 1533*, 25 Henry VIII, c. 19. Cf. DIAPER, P. A., *Law and Religion in England...*, cit., pp. 132-134.

<sup>32</sup> HILL, M., *Ecclesiastical Law*, cit., p. 7.

<sup>33</sup> Cf. DIAPER, P. A., *Law and Religion in England...*, cit., p. 149.

<sup>34</sup> Cf. *The Canon Law of the Church of England...*, cit., pp. 25-26.

<sup>35</sup> Cf. ROWELL, G., STEVENSON, K., WILLIAMS, R., *Love's Redeeming Work: The Anglican Quest for Holiness*, Oxford 2001, p. 28-33.

with the establishment of the *Code of Canons*<sup>36</sup>. This code remained operative within the Church of England until the introduction of a fresh compendium of canon law in 1964 and 1969, known as *The Canons of the Church of England*, drawing unmistakable inspiration from its predecessor. While the structure of the canons aligns with the format adopted in the 1603 Code, amendments reflecting the overarching evolution of legal paradigms were incorporated. In the new compilation of statutes of the Church of England, a deliberate omission was made to address aspects of communal operations falling within the purview of ecclesiastical law, construed as the body of state regulations concerning the Church.

Therefore, what constitutes canon law within the Church of England? Following the aforementioned analyses, it proves challenging to formulate a clear definition of canon law within the Church of England. In discussions of canon law within Churches, J. Krukowski defines it as “a set of legal norms established or recognized by church authorities regulating relations within the Church and the Church's relations with other communities; the doctrine of norms applicable in the Church”<sup>37</sup>. This definition, although broad in scope, may be applicable to Anglican canon law. However, it might be more appropriate to subscribe to the claim put forth by R. Jones, contending that canon law has been defined as the internal regulation of the Church, encompassing principles of faith, morality, and discipline<sup>38</sup>. In this context, as R. Jones further elaborates, the canon law of the Church of England also delineates guidelines for the governance of the Church in ecclesiastical matters<sup>39</sup>. This definition is rather enigmatic, unless it is assumed that these directives do not stem from the Church's intrinsic establishment of this law but rather from some external force. As suggested by T. Briden, according to the canonical law, the extent of English law is commensurate with its relevance to the affairs of the Church of England<sup>40</sup>. This pertains to the close interconnections between the Church of England and the British Monarchy, manifested through the unique role of the monarch in the hierarchical structure of the Church, as well as the mutual overlapping of powers between spiritual and political authorities.

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<sup>36</sup> *Constitutions and Canons Ecclesiastical. Treated upon the Bishop of London, President of the Convocation for the Province of Canterbury, and the rest of the Bishops and Clergy of the said Province. And agreed upon with the Kings Majesties License in their Synod begun at London, Anno Domini 1603. And in the year of our Sovereign Lord, James by the grace of God king of England, France and Ireland, the First, and of Scotland the seventh and thirtieth*, in Westminster Abbey Archive, m. c. 1283.

<sup>37</sup> KRUKOWSKI, J., «Prawo kanoniczne», in *Leksykon prawa kanonicznego*, ed. SITARZ, M., Lublin 2019, p. 2207.

<sup>38</sup> JONES, R., *The canon law of the Roman Catholic Church and the Church of England*, Edinburgh 2000, p. 24.

<sup>39</sup> *Ibid.*

<sup>40</sup> BRIDEN, T., *Moore's introduction to English Canon Law*, New York 1992, pp. 3-4.



### 2.3. The Autonomous Legal Framework of the church of England – act of supremacy and additional documents

The Anglican Reformation emerged as a protracted process influenced by various events, notably those carrying legal ramifications<sup>41</sup>. Undoubtedly, the Act of Supremacy emerges as the central document precipitating the schism, with the Monarch assuming the role of the Church's governor. It is noteworthy to recognize that the schism did not arise solely from the absence of consent regarding the annulment of Henry VIII's marriage; rather, this circumstance merely acted as a precipitant for the royal defiance against the papacy. While the papal dissent did indeed inaugurate the tangible process of the English Church's divergence from the Roman communion, it was not the exclusive determinant<sup>42</sup>.

Owing to the evangelization efforts led by Augustine of Canterbury among the Anglo-Saxons, the Catholic Church in England has historically maintained a relatively high degree of autonomy compared to other churches in contemporary Europe. This autonomy was formally recognized during the period of the *Magna Carta Libertatum*<sup>43</sup>, ratified on June 15, 1215, under the reign of John I. This charter provided assurances to the clergy and granted independence to the English Church. Notably, the *Magna Carta* referenced Pope Innocent III's 1214 bull, which placed England under the protection and authority of Rome, effectively making it a vassal of the Holy See<sup>44</sup>. However, despite its supposed stability, the *Magna Carta Libertatum* failed to bring enduring peace during King John's reign, leading Pope Innocent III to annul it in 1216. Throughout history, English monarchs have enjoyed papal favor, and reciprocal support between them and the papacy endured until the reign of King Henry VIII Tudor.

As observed by P. A. Diaper, the Parliament, convening in an unprecedented manner over multiple sessions between 1529 and 1536

*“[...] prepared the legal way to sever the English Church from the rest of Europe, to end its independence upon the papacy and to invest within the Crown supreme judicial and legislative power over the Church, in place of papal authority”<sup>45</sup>.*

<sup>41</sup> The monumental historical work regarding the Reformation in England was compiled by Hughes. HUGHES, P., *The Reformation in England. I. The King's proceedings*, London 1950; HUGHES, P., *The Reformation in England. II. Religio depopulata*, London 1953; HUGHES, P., *The Reformation in England. III. True religion now established*, London 1954.

<sup>42</sup> DIAPER, P. A., *Law and Religion in England...*, cit., pp. 66-69.

<sup>43</sup> *Magna Carta 1215*, The British Library, Cotton MS Augustus II.106.

<sup>44</sup> Cf. INNOCENTIUS PP. III, «Bulla Aurea (Bull of Innocent III taking England under his protection) », 21.04.1214, in *The British Library*, Cotton Charter VIII.24.

<sup>45</sup> Ivi., p. 69.



One of the notable legislative enactments by the reformist Parliament was the *Pardon of Clergy Act* of 1531. In this statute, Henry VIII accused the clergy of contravening prior parliamentary edicts, notably the *Praemunire*<sup>46</sup>. The *Praemunire* stipulated that the pope must acknowledge the Crown's authority to bestow benefices upon the clergy<sup>47</sup>. According to T. Zieliński, it is noteworthy that as early as in 1531, Henry VIII mandated the clergy to recognize the monarch as the Protector and Supreme Head of the Church of England and clergy<sup>48</sup>. This attests to the progressive nature of the Anglican Reformation, also referred to as the Anglican schism.

Another legislative maneuver conceived to coerce the Pope into annulling Henry VIII's marriage was the *Conditional Restraint of Annates Act*<sup>49</sup>, which restricted the papal privilege to receive annates<sup>50</sup>. Concurrently, in the same year, *The Ecclesiastical Appeals Act*<sup>51</sup> was enacted, penalizing any acknowledgment of papal authority or adherence to papal decrees regarding the Church or faith<sup>52</sup>, while also forbidding appeals to the Bishop of Rome<sup>53</sup>. After King Henry VIII's marriage to Anne Boleyn on July 11, 1533, Pope Clement VII excommunicated the king and declared the remarriage null and void.

In the same year, Parliament ratified *The Submission of Clergy Act*<sup>54</sup>, imposing sanctions, particularly targeting the clergy, for their refusal to acknowledge the appellate authority of the Monarchy in all ecclesiastical matters in England. This statute stipulated that clergy members were prohibited from insisting on compliance with or enforcement of any extant regulations derived from provincial or synodal constitutions, as well as canons, unless sanctioned by the sovereign. Additionally, the act vested the Monarchy with the power to appoint clergy members<sup>55</sup>.

P. A. Diaper observes that all the elements converge towards the conclusion that:

*“It would be a matter of time for Henry, and within a period of four years using the services and the influence of Thomas Cromwell in Parliament, to compel both Houses to pass an Act of Parliament which would ultimately proclaim Henry not only to be the Protector, single and*

<sup>46</sup> *Pardon of the Clergy Act 1531*, 22 Henry VIII, c. 15.

<sup>47</sup> Cf. SCARBRICK, J., «The Pardon of the Clergy 1531», in *The Cambridge Historical Journal* 12 (1956) 1, pp. 28-29.

<sup>48</sup> ZIELIŃSKI, T., *Państwowy Kościół Anglii*, s. 44. Trans. CIESŁOWSKA, K.

<sup>49</sup> Cf. *The Acts in Restraint of Annates 1532*, 23 Henry VIII, c. 20.

<sup>50</sup> Cf. DUDZIAK, J., TYMOŚZ, S., «Annaty», in *Leksykon Prawa Kanonicznego*, ed. M. SITARZ, Lublin 2019, pp. 126-128.

<sup>51</sup> Cf. *The Ecclesiastical Appeals Act 1532*, 24 Henry VIII, c. 12. This document is also known as *Statute in Restraint of Appeals* or *Act of Appeals and The Act of Restraints in Appeals*.

<sup>52</sup> *Ibid.*

<sup>53</sup> DIAPER, P. A., *Law and Religion in England...*, *cit.*, pp. 71-72.

<sup>54</sup> *Act for the Submission of the Clergy and Restraint of Appeals 1533*, 25 Henry VIII, c. 19.

<sup>55</sup> Cf. *Ibid.*



*supreme Lord, as far as the law of Christ allows of the English Church, but its only supreme head - the supreme head of the Church of England*<sup>56</sup>.

The King assumed effective governance of the Church in England, particularly the Church of England, formalized after Henry VIII's excommunication and the enactment of the Act of Supremacy.

The Act of Supremacy must be contextualized within the framework of other significant legislative enactments. Henry VIII's Act of Supremacy contained a crucial provision stating that the monarch was “the only supreme head on earth of the Church of England”<sup>57</sup>.

Historically, the initial Act of Supremacy<sup>58</sup> is regarded as the pivotal event in the divergence of England from the Holy See. It established the Monarchy's dominion over both secular and religious affairs within the realm. Although these transformations did not instantaneously sever connections with Rome, the endeavors of the reformist Parliament and the progressive decline of papal influence facilitated the emergence of the Church of England. This autonomous religious entity, distinct from Rome, was significantly influenced by the wider reformist movement in Europe, influencing its theological, doctrinal, and liturgical trajectory. This implies that Henry VIII went beyond mere supremacy over the Church, asserting his entitlement to assume Christ's position within it. Thus began a period of notable theological reforms. The Act compelled the clergy of the Church in England to acknowledge the monarch's paramount role within the Church and once more annulled the clergy's prior allowances for internal church law formulation within Convocation. Ultimately, the document institutionalized the principle of “full power and authority”<sup>59</sup>. The final issue appears to distinctly imply the constitutional principle of firstly suspending the law, followed by a complete prohibition of appeal to Rome. Consequently, the spiritual authority of the Crown, encompassing both the king and Parliament<sup>60</sup>, can only be effectively exercised by establishing appropriate *spiritual channels* that are accountable to and dependent on the monarch<sup>61</sup>.

<sup>56</sup> DIAPER, P. A., *Law and Religion in England...*, p. 71.

<sup>57</sup> *Act of Supremacy 1534*, 26 Henry VIII, c. 1.

<sup>58</sup> Cf. ELTON, G. R., *The Tudor Constitution: Documents and Commentary*, Cambridge 1982, pp. 342-345.

<sup>59</sup> *Act of Supremacy 1534*, cit.: “full power and authority”.

<sup>60</sup> DIAPER, P. A., *Law and Religion in England...*, cit., p. 90-91.

<sup>61</sup> Cf. CROSS, G., *Authority in the Church of England*, op cit., p. 127.

### 3. CONTEMPORARY CANON LAW OF THE CHURCH OF ENGLAND

The contemporary period of Church of England law commenced in 1919 through the implementation of parliamentary regulations that established *the National Assembly of the Church of England*<sup>62</sup>, subsequently transformed into the *General Synod of the Church of England*<sup>63</sup>. This initiation signified the onset of a new stage in Church legislation, endowing the authority to commence legislative procedures and acknowledging external sources of legislation as legal underpinnings for the community<sup>64</sup>.

Drawing from the points, identifying a single source of canonical law within the Church of England presents a challenge. In doctrinal discourse, terms such as *canon law*, *ecclesiastical law* and the broader *church law* are in use. While the Catholic Church clearly designates the ecclesiastical authority as responsible for crafting internal community law, distinguishing between strictly canonical acts and secular ones in the Church of England remains problematic. N. Doe, a distinguished expert in the law of the Church of England, emphasizes that the terms “canon law” and “ecclesiastical law” are used so interchangeably and inconsistently that it is difficult to arrive at their accurate definition, proper demarcation, and appropriate application. Despite this complexity, efforts are made to elucidate these concepts and their application by borrowing the legal source division framework from the Catholic Church. It is acknowledged that these terms are not synonymous even within linguistic contexts. Consequently, irrespective of the legislative process employed, it is posited that the Church of England's canonical law encompasses all provisions established by the Church itself, including canons, while ecclesiastical law encompasses legislation stemming from state legislative activity. This inference is drawn from the underlying intent behind specific legislative enactments. Amendments to canons made by the General Synod are integrated into the canonical law framework, whereas alterations initiated by Parliament, such as those pertaining to marriage (often indirectly linked to the Church of England), constitute ecclesiastical law, especially when independently instigated by Parliament. However, it is important to acknowledge that this proposed resolution is not immune to inaccuracies, as even in non-legislative processes like episcopal nominations, the state apparatus exerts influence.

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<sup>62</sup> Cf. *Church of England Assembly (Powers) Act* 1919, 9 and 10 George V, c. 76.

<sup>63</sup> Cf. *Synodical Government Measure* 1969.

<sup>64</sup> Cf. DOE, N., *The Legal Framework of the Church of England: A Critical Study in a Comparative Context*, Clarendon Press Oxford 1996, p. 16.



The legal structure of the Church of England undergoes a multifaceted legislative process, wherein laws originating from Parliament, or the General Synod ultimately require the Monarch's approval, known as the Royal Assent<sup>65</sup>. This integration of Church law into the wider English legal system, as highlighted by M. Rynkowski<sup>66</sup>, holds significant importance, especially considering the complexities inherent in the legislative procedures.

It is crucial to recognize that, owing to England's common law tradition, providing an exhaustive catalogue of legal acts that constitute sources of law in the Church of England is impractical<sup>67</sup>. Nonetheless, following the legal framework proposed by M. Rynkowski, it becomes apparent that measures and Acts of Parliament hold a pivotal position<sup>68</sup>. Intriguingly, these two categories of legislative acts undergo distinct processes. Measures are drafted by the General Synod and require either approval or rejection by Parliament, whereas parliamentary acts do not require endorsement from the General Synod. Nevertheless, both types of legislation require the Monarch's approval, termed the *Royal Assent*<sup>69</sup>. Measures encompass all matters concerning the Church of England<sup>70</sup> and, as emphasized by M. Hill, must conform to the European Convention on Human Rights and England's constitutional laws. It is noteworthy that the United Kingdom's constitutional laws encompass the following legal acts: Magna Carta 1297, 25 Edward, c.1, Bill of Rights 1688, Act of Settlement 1700, Parliament Act 1911, Statute of Westminster 1931, Statutory Instruments Act 1946, Crown Proceedings Act 1947, House of Commons Disqualification Act 1975, Life Peerages Act 1958, Peerage Act 1963, Parliamentary Commissioner Act 1967, Ministers of the Crown Act 1975, Senior Courts Act 1981, Representation of the People Act 1981, Representation of the People Act 1983, Parliamentary Constituencies Act 1986, Tribunals and Inquiries Act 1992, Human Rights Act 1998, House of Lords Act 1999, Representation of the People Act 2000, Political Parties, Elections and Referendums Act 2000, and Constitutional Reform Act 2005. It is notable that measures are essentially governed by the same rules of interpretation as other acts issued by Parliament.

<sup>65</sup> Cf. MICHALAK, A., *Postępowanie ustawodawcze w parlamencie Zjednoczonego Królestwa w zakresie rządowych projektów ustaw publicznych*, Warszawa 2013, pp. 171-172.

<sup>66</sup> Cf. RYNKOWSKI, M., «Prawo Kościoła Anglii jako część systemu prawa Anglii», in *Studia z Prawa Wyznaniowego* 18 (2015), p. 202.

<sup>67</sup> Cf. DOE, N., «The Common Law of the Anglican Communion», in *Ecclesiastical Law Journal* 7 (2003) 32, pp. 11-12.

<sup>68</sup> Cf. RYNKOWSKI, M., *Prawo Kościoła Anglii jako część systemu prawa Anglii*, cit., p. 209.

<sup>69</sup> Ivi., pp. 205-208.

<sup>70</sup> Cf. ZIELIŃSKI, T., *Państwowy Kościół Anglii*, cit., p. 234.

However, within the domain of Church of England law, there is a discernible tendency towards greater flexibility in interpretation<sup>71</sup>.

However, for a canonist, canon law, the Church's own legal framework<sup>72</sup>, holds paramount importance. In addition to the legislative acts, it encompasses Canons promulgated by the General Synod with royal assent, statutory instruments, and secondary acts issued based on the Canons (which do not require Parliament's approval). It is critical to note that although canonical norms are established by the ecclesial community, their legal efficacy hinges on the involvement of the state apparatus<sup>73</sup>. This scenario contradicts the essence of the Church of Christ, which inherently retains the right to autonomously create law<sup>74</sup>. Nonetheless, it is imperative to recognize that alongside *quasi-legislative acts*, which exert increasing influence in church governance<sup>75</sup>, *Canons* serve as expressions of canon law reminiscent of the legal system of the Catholic Church. In the context of the Church of England, *quasi-legislative acts* function as mechanisms for governing and organizing the community's administrative affairs. As emphasized by N. Doe:

*“Increasingly in the Church of England, authorities are regulating subjects not by means of laws comprising the orthodox sourced of the church’s central legal system but by regulations, codes of practice, circulars and guidelines issued by a host of ecclesiastical authorities either centrally or a diocesan level”*<sup>76</sup>,

This emphasizes the complexity of formulating specific laws, a process that already differs between the Province of York and Canterbury. As T. Zieliński points out, “*quasi-legislation, ius divinum, customs, and ius liturgicum (...)* are not considered legal within the context of state law (...); their importance lies exclusively within the internal sphere of the Church of England and thus they are primarily subject to legal-canonical examination”<sup>77</sup>. Therefore, they serve as a quintessential illustration of legislative activities within the Church of England.

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<sup>71</sup> Cf. DIAPER, P. A., *Law and Religion in England...*, cit., p. 224.

<sup>72</sup> Cf. KROCZEK, P., «Naturalizacja prawa kanonicznego w optyce prawodawczej», in *Acta Universitatis Lodzensis Folia Iuridica* 81 (2017), p. 18.

<sup>73</sup> Cf. DOE, N., *The Legal Framework of the Church of England*, cit., p. 18.

<sup>74</sup> Cf. KROCZEK, P., «Naturalizacja prawa kanonicznego w optyce prawodawczej», cit., pp. 18-19.

<sup>75</sup> Cf. HILL, M., *Ecclesiastical Law*, cit., p. 21.

<sup>76</sup> DOE, N., *The Legal Framework of the Church of England*, cit., p. 19.

<sup>77</sup> ZIELIŃSKI, T., *Państwowy Kościół Anglii*, cit., p. 230.



Another significant factor among the legal sources in the Church of England is case law<sup>78</sup> and precedents<sup>79</sup>. Historically not integrated into canon law, judges and canonists have recognized the practicality of relying on past judgments and practices for adjudication or case analysis<sup>80</sup>.

#### 4. CONCLUSIONS

The law within the Church has been in existence since its inception by Jesus Christ and undergoes continual revision through the workings of the Holy Spirit. Fundamental to the Church's mission, this legal framework is rooted in the Holy Scriptures of the Old and New Testaments and has been shaped by authoritative figures within the Church.

The legal framework of the Church of England draws extensively from Catholic law, supplemented by influences from the common law system prevalent in Anglo-Saxon countries. This dual heritage significantly impacts the sources and legislative intricacies of the Church of England, both of which can be traced back to Christ, the Apostles, and the teachings of the Church Fathers.

The law of the Church of England is formulated with the involvement of state authorities: the Parliament and the Monarchy. Its foundation lies in the Act of Supremacy, which led to the establishment of the Church of England. However, the classification of the sources of Church of England law poses challenges, as there is a suggested division based on the issuing authority, irrespective of the legislative process. This suggests that the internal law of the Church of England consists of regulations initiated by the General Synod, while other acts, although indirectly related to the community, exhibit either state or denominational characteristics. This complexity arises from the diverse legislative channels and the inherent entanglements with political-state affairs within the Church.

Legal regulations provide clear directives on accountability, outlining responsibilities and actions to be undertaken or avoided. This clarity facilitates purposeful and efficient conduct within the Church's jurisdiction.

*“Law in the life of the Church is no different. Canon Law begins from that basic affirmation of equity which is the fact of membership of Body of Christ – a status deeper and stronger than any civil contract or philosophical argument. And it seeks clarity about who may do what and who is*

<sup>78</sup> Cf. GORDON, A., «The Development of Canonical Jurisprudence in the Roman Catholic Church and the Church of England», in *Ecclesiology* 4 (2008), pp. 316-319.

<sup>79</sup> Cf. JONES, R., *The Canon Law of the Roman Catholic Church and the Church of England...*, op. cit., p. 126.

<sup>80</sup> Cf. HILL, M., *Ecclesiastical Law*, cit., p. 14.

*answerable to whom, because every Christian has to know how to work out their responsibility to God within the context of the various relationships and obligations they are involved in. Understanding and knowing how to work with Canon Law is a necessary aspect of exercising authority and holding responsibility in the Church [...]*<sup>81</sup>.

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<sup>81</sup> *The Principles of canon law common to the churches of the Anglican Communion*, London 2008, p. 11.