Individual Cups? Law, Ecclesiology and Eucharist

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I write after the advice of the archbishops in July 2009 on restricting the use of the common cup has been withdrawn. It came under attack during its period of currency, not only on the grounds that it was medically quite unnecessary, but also on the interesting grounds that it was in violation of the Sacrament Act 1547. The Act concedes that the distribution of the cup would be the norm 'except necessity otherwise require'. The swine flu alarm raised the issue of how to handle the necessity. This Comment arises from the alternatives which were then commended – intinction or distribution in one kind (bread) only (hereafter called 'one-kind'). The discussion here concerns solely the duties of officiants at Holy Communion, and does not do more than touch in passing on how an individual communicant may respond.

The advice given by the archbishops cited a document on the Church of England website,[1] which stated that:

> The Legal Advisory Commission has advised 'that the practice of intinction may be regarded as lawful where a communicant or the congregation as a whole is fearful of contracting or communicating a contagious disease through drinking from the cup'.[2] However if the consecrated wine is administered to communicants they cannot be required to receive it by intinction. The use of individual cups is not lawful in the Church of England and would, in any event, also involve hygiene risks in the context of pandemic flu.

The legal opinion cited was quoted by my own diocesan bishop in the form published in the 1994 edition of the *Legal Opinions*. It is that which I here address, but I first note in passing that the last two sentences quoted above are not part of the *Opinion* – the first one paradoxically makes one-kind a likely outcome (as certainly happened in many contexts, including in my experience the consecration of bishops); and the second apparently summarises the thrust of the *Opinion*. It is this outlawing of individual cups which I wish to scrutinise.

But an inspection of the *Opinion* raises serious doubts as to its soundness – and, while most Anglicans would adhere, perhaps strongly adhere, to the practice of the common cup, it is far from clear that, in emergencies, all would then

1 <http://www.cofe.anglican.org/info/swineflu/communion.doc>.
2 *Legal Opinions Concerning the Church of England*, (eighth edition, London, 2007), pp 345–348.

https://doi.org/10.1017/S0956618X10000098 Published online by Cambridge University Press

prefer intinction or one-kind to the use of individual cups. So there may be practical wisdom in sifting the argument of the *Opinion*.

The *Opinion* covers just over four pages (in the 1994 edition), the first two of which are given to citing the Lord's institution of the supper, and demonstrating at some depth that the Church of England has always required 'the cup' to be delivered 'into the hands of each communicant'. On the third page it starts to assert that the BCP and ASB (then the main 'alternative services') 'clearly contemplate that there is to be administration … in a common cup'. However, it immediately concedes that there may often be more than one cup in use (which in turn means, though the *Opinion* is here not so explicit, that any reference in rubrics or cross-headings to 'the cup' has no implications about the actual number of cups employed at any celebration). However, the *Opinion* goes to say that individual cups 'would be unlawful in that the priest would be departing from established liturgical custom' and that custom 'is enjoined by, or conformable to, the forms of service authorized for use'. And here, I submit, the *Opinion* starts to fall apart – 'enjoined by' is one thing: 'conformable to' is another. 'Enjoined by' would preclude other uses; 'conformable to' most certainly would not. And the 'liturgical custom' is *not* 'enjoined by' (or we would be told; and it would not be called custom but law); so it must be merely 'conformable to'. The Legal Advisory Commission then states its view that the variation in the authorised services which individual cups would imply cannot be deemed as being 'not of substantial importance' in the terms of Canon B5(1). But in so stating they have assumed that the 'common cup' is 'enjoined' and they have lost sight of their alternative of 'conformable to'. They have evaded the question as to whether individual cups might not also be 'conformable'. The fact that it is 'established custom' (rather than explicit rubric or even case-history) which is the standard of reference is also vulnerable, for by definition we are looking for a variant on 'established custom' in a case of medical emergency. It is highly probable that both intinction and one-kind would have been viewed as 'departing from established custom' in the past. Indeed, by definition, when we are looking for ways to vary from established custom, the quest is in vain if established custom is then itself invoked as precluding any proposed variant. In this case the archbishops were inevitably giving guidance as to departures from established custom. In summary, as far as law is concerned (and individual cups are being declared unlawful) we have, first, a law contained in rubrics and canons; second, an 'established liturgical custom' which is itself not more than 'conformable' to the law; and third, an emergency in which variants from established custom are being sought.

In passing, we should no doubt note that 'sharing the common cup' has in the Anglican culture a strong atmospheric sense that this is part of the mutual bonding in communion of the members of Christ's body, that the symbolism here is vital, and something serious would be missing if it were not

https://doi.org/10.1017/S0956618X10000098 Published online by Cambridge University Press

available.[3] Anglican apologias to the Methodists often take this form (it is found, with a selective reliance upon the *Opinion*, in the 2005 Interim Report of the Anglican-Methodist Joint Implementation Commission[4]). However, the *Opinion* has no such doctrinal basis to it, the nearest it goes being to say 'it ensures that all communicants are treated without distinction and is an outward and visible sign of unity'. But even this must be viewed as perilous when, as the *Opinion* acknowledges, the existing widespread custom is that not all receive from the single one-and-only cup.

The Legal Advisory Commission makes its case about 'established custom' in para 8 on its third page. Had the Commission actually had a cut-and-dried legal position to expound, it might well have rested its case there. However, it betrays real uncertainty by going on to throw in, as though adding cumulatively to the case, three 'further points' in para 9. But the three are so extraordinarily weak as to convey the strong impression that the Commission knew the answer it wanted – the negativing of individual cups – from the beginning, and pursued it as a matter of policy, rather than law or doctrine. Here then are the three 'further points' made in para 9, each assessing the hypothesis of individual cups:

'The priest ... would thereby be making a difference between himself and other communicants.' But there is no reason at all why the president should have a different kind of cup from the recipients, and in cases of a fear of infection the president's cup would be as individual as everyone else's. If, of course, a flagon were being consecrated with a view to a subsequent pouring of wine into individual cups, the president would hardly be receiving from the flagon, but again from an individual cup. It is quite hard to visualise the scenario which is being refuted. And not only so – but airing a supposed objection that there would be a visible difference between what the priest received and what the people received is wildly absurd when 'priest's wafers' are self-evidently different from what the people receive, but would surely fall under the same condemnation. Congregations seem used to that difference. In any case, where one-kind is advocated, then the president visibly receives the cup on his or her own, establishing an *enormous* visible difference from what the other communicants receive.

There would be 'a serious difficulty over the ablution of the vessels'. But would there be? Methodist and United Reformed congregations do perfectly well at cleansing individual cups. The only difficulty might be where the present practice is the consumption of the last drop in each cup separately followed by adding first wine and then water and drinking up at each stage, and insisting that such ablutions are of the essence of the rite. But

3 See N Sagovsky, 'Swine flu must not guide belief', *Church Times*, 25 September 2009.
4 *In the Spirit of the Covenant*, pp 44–46

https://doi.org/10.1017/S0956618X10000098 Published online by Cambridge University Press

this is a self-imposed rigour, as the rites and their rubrics speak of consuming the elements that remain, but do not use terms of cleansing or ablutions done to vessels. In many churches ordinary consumption from a cup containing consecrated wine is simply followed by ordinary washing at a sink. Of course some drops of wine may then go down the drain, but this is hardly different from the loss of crumbs when leavened bread is used in accordance with the BCP rubrics. If fifty individual cups are drunk to the bottom (as they are in non-conformist churches), then washing these cups afterwards, whether in sinks or machines, is no different in principle from the washing done, and done perfectly canonically, in many of the existing vestries.

The third quibble is 'who provides the individual cups?' and raises an aunt sally of the communicants all bringing their own – some gold, some silver, some plastic – and 'again mischievous distinctions will occur'. On the other hand, 'if the parish provides the cups many practical difficulties may occur. . .'. But these difficulties are not specified; if they exist, they form a challenge to be overcome, not a barrier to the attempt; and in any case 'practical difficulties' are virtually irrelevant to legal considerations. Again, the Methodists do not report 'practical difficulties'.

So the *Opinion* says that intinction or one-kind are in and individual cups are out. Now there *may* be a case in some instances for intinction – though the fact that Jesus instituted the two elements at different points, and distributed them separately, and that separateness of distribution is entrenched in our rubrics, seems to be ignored in the *Opinion*. So, in our emergencies, no doubt individuals who choose to hold their bread and dip it in the wine when offered the cup should be free to do so. But in terms of the congregation making plans to retain a distribution of wine to all communicants, surely individual cups are far better? For the issue is *not* whether individual cups are preferable to shared cups, but whether they are a better fall-back in emergency than intinction or one-kind.

Firstly, then, we should have no truck with the argument the Commission does not use – that we have to share a 'common' cup. St Paul says (and our words at the breaking of bread echo him) that we all share one bread – but I see little sign of repentance from the atomised individual wafers which our Victorian ancestors brought in. When a serious reversion from the atomised bread has been brought in, then we may worry about individual cups in terms of sharing with each other; but not until then.

Secondly, we need to consider the present practice of using, say, six cups with large congregations. Obviously, each cup will usually provide for a good number of people. But if distribution is done from a 'station' and for some reason the people do not see it and go elsewhere, and there is, for the purposes of this hypothesis, one cup from which only one person has drunk, has that one

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person missed out in reception of the sacrament? Was it a 'common cup' or not? Indeed, to press the case, what is the status of the president's reception of the cup when the people receive in one kind (which happens not only in swine flu emergencies but is, rightly or wrongly, done in hospital chapels and in places reserving the sacrament in one kind)? Is not that president receiving from an 'individual cup', and one in which the communicants generally are not only contingently not sharing, but are being prevented from sharing? What kind of 'common cup' is that? And is it not a departure from established custom?

Then, before I come to my proposal, there is one further point in the *Opinion* which deserves serious questioning. Having said that the cup must be delivered into the hands of the communicants (a practice much honoured in the breach over the last century and a half), they then say that, with intinction, the communicant may touch the cup with one hand while dipping the bread with the other, and *that* will make the practice consistent with the law. We have heard nothing about this (frankly ludicrous) attempt to make intinction legal. And the *Opinion* does not apparently countenance one-kind – it provides for disease situations to be met solely by intinction.

There are, I submit, different ways in which individual cups may be employed. A tray of cups already filled (and the Methodist ones are thimble-sized) may stand on the communion table and be consecrated thus. Or a single flagon may be consecrated and individual cups filled from it. Or it is even possible (though perhaps more problematical) for the people to bring their own cups, and hold them out for the wine from the flagon to be poured in as the method of distribution. As the law and the *Opinion* do not put much weight upon the arguments from symbolism and the common cup, any of these would meet the case; but if the common cup were emphasised as important (which, as the *Opinion* saw, is difficult to do) then the second of my suggestions would fit better than the first. And let us get properly shared *bread* in universal use, before we attempt to mount a generally applicable argument about the common cup.

As a communicant who has been considerably deprived by the expedients used, I urge that, when necessity moves us from established custom, then here is a better place to inhabit. If Jesus instituted a sacrament of bread and wine, with the two elements received separately from each other, how is it that the Church of England can so readily declare a second-best way of so receiving the elements out of court, and go instead for much further departures from Jesus' institution?

But then, straining out gnats and swallowing camels is a persistent foundation principle of our corporate life.

doi:10.1017/S0956618X10000098

https://doi.org/10.1017/S0956618X10000098 Published online by Cambridge University Press