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## Relationships: the law and local government

**Joshua Hordern**

Joshua Hordern is a Councillor at St Edmundsbury Borough Council and Associate Director of the Kirby Laing Institute for Christian Ethics ([www.klice.co.uk](http://www.klice.co.uk))

### Introduction

When people think about government and law, they often think about national government and national legislation. Fed by the mass media our public consciousness is largely directed to the Houses of Parliament rather than the local council chamber. But in fact a large amount of what affects people's day-to-day civic relationships with one another is shaped at the level of local government. From planning decisions to waste collection to policing priorities to the organisation of schools, much of the daily details of our interrelated lives are worked out by partnerships of councillors, council officers, police officers and residents. Law is woven into these relationships in ways which connect with important theological considerations.

### Relationships in local government

It is worth specifying some of the key relationships in local government. Local government is diverse in its constitution across different areas. I will reflect particularly on the way that non-Metropolitan District councils operate. Such councils typically form a tier below County Councils. This two-tier arrangement is distinguished from large, typically urban Unitary Authorities where authority is held in a single tier. Birmingham would be an example of this latter mode of local government. There may also be a range of parish and town councils within a single local authority area. In addition to this inter-council structural diversity, at the District level, there is diversity in the internal organisation of councils: for example, whether leadership is exercised via a cabinet or via a committee system.

But whatever the exact internal structure of a District council's decision-making and the number of tiers of local government with which it interrelates, a number of key relationships remain fairly constant. First, councillors relate to local residents within the authority area as their representatives. Representation is a complex notion. In the British system at least, it is distinct from delegation since the representative is expected to form their own judgment rather than simply execute a decision which has been made by the mass of the people assembled in some other forum. Local representatives have to decide how to operate within the law in a manner which seems most in accord with the common good.

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Second, councillors also interrelate with the officers of the council who maintain and develop the range of services which the authority provides. Since councillors are typically part-time and non-specialist in local government this relationship involves dependence on officers for the information and expertise whereby councillors can make wise decisions. From the perspective of the officer, the challenge is to support the councillors without exercising undue influence on decisions which are by law the decisions of the elected representatives not the officers.

Third, the council also relates to non-residents who visit the area for work or leisure reasons. Although they do not pay council tax to the relevant local authority, they typically pay for services in other ways (e.g. parking) and may rightly hold the council accountable for the environment in which they work or enjoy recreation.

Fourth, local district councils also relate to other regional political bodies such as County Councils and neighbouring district authorities, to national law and to European legislation in manifold ways. We will return to some of these when we consider the impact of national law shortly.

Finally, perhaps the most important dimension of local government, however, is the interrelation which occurs among residents of a local authority area because of the activity of the local authority. This may be understood in two ways. On the one hand, there is the local resident activity which is directly coordinated or prompted by a local authority – participating in a consultation on how scarce funding is to be distributed; organising one's own waste disposal according to the weekly (or fortnightly) bin collection; attending a planning or licensing meeting; gaining access to emergency or short-term housing. On the other hand, there is the range of social activity which depends upon local authority action but only indirectly – the pleasant afternoon with friends and family in the park maintained by the local authority; the planned and unplanned social and economic interactions which occur on local authority coordinated market days; the coalescing of community relationships around a project to take over the running of a community centre or other local asset. Law is involved subtly in all these activities since they all are affected in some way by local government.

## **Theology and local government**

Before moving to look at a specific example of law, we should ask why local government is interesting theologically. I want to suggest three main reasons.

First, by thinking about local authorities we can see especially clearly the difference between government and the social organism which government is instituted to serve. Because some local government coordinated activity is manifestly mundane and supports people's non-political day-to-day social experience (e.g. cutting the grass in the park, keeping a market square well maintained) we see clearly that human government is primarily the residents' servant not their master. This is important theologically because people's vision of humanity can be clouded if it becomes over-politicised. Additionally it is important morally because people's desire to take action locally can be undermined if they perceive that their local government is unresponsive and overbearing. But if local

authority is manifestly accountable and responsive to people (e.g. by conforming decisions about spending cuts to the will of the people expressed in an effective consultation), then a better ethos can develop.

Second, attention to locality has deep resonance with the Christian tradition that affirms the goodness and importance of the incarnation of Christ within a particular time and place. The human sense of belonging to place, family and locality is fulfilled by Christ's birth into a family and place to which he continually returned and his death for a people he loved. The fact that he was eventually rejected in his home town of Nazareth does nothing to undermine the reality that proximate relations to family, neighbour and town were vindicated by Christ's indwelling of the human experience.

Third, this vindication of locality celebrates the development of local loves and affections. It is natural and proper for people to have attachment to their particular locality in such a way. It is commonplace to dismiss such attitudes as 'parochial'. Indeed Christians should be glad to be called parochial if it entails a deep engagement in the locality in which one lives. To maintain such engagement requires discipline of attention, close friendship and the capacity to network intensively. Of course, to be solely parochial would be to deny the cosmic reality of Christ's universal reign. Thus it is right for local authorities to learn not only from neighbouring authorities in the same legal jurisdiction but from local authorities in other nations.

Fourth, local loves enable people to be fine-grained in their attention to local life, politics and law. The normal work of government is judgment – distinguishing between what is right and what is wrong in a manner which is effective to create a new public context.<sup>i</sup> God has equipped people with the capacity to love and to make distinctions between right and wrong loves. This means that love can order judgment as when residents who care for a local park object to a council plan for its development and instead come up with an alternative creative solution.

### **A worked example: the Localism Act**

One of the challenges for councillors, officers and residents is to stay abreast of changes in the law which impact upon local authorities. National law shapes local government on a range of issues such as housing and planning, not only by what the law actually says but by what it is perceived to say. But instead of talking generally about law and local government, we will look specifically at how the Coalition government's Localism Act bears on the relational and theological considerations above. The majority of this Act's measures came into force in April 2012. Its overriding rationale is to change the law so that councillors, officers and residents can act with more confidence in their locality. The *Plain English Guide to the Localism Act* explains that 'Local authorities' powers and responsibilities are defined by legislation. Sometimes councils are wary of doing something new...because they are not sure whether they are allowed to in law, and are concerned about the possibility of being challenged in the courts.' But the view of the Act is that 'power should be

exercised at the lowest practical level – close to the people who are affected by decisions, rather than distant from them’, and a law is necessary to shift power downwards.

The intention of the law, therefore, is not to restrict residents and councillors but rather to clarify the scope of freedom for neighbourly activities concerning fine-grained matters of local life. Two aspects of the Act illustrate the direction of travel.

First, there is the Act’s provision for neighbourhood planning and for communities to take over the running of some assets and services. This entails local groups being authorised to make plans which automatically have some legal standing in relation to any existing Local Development Framework or to bid for assets and services when appropriate. These are definite though micro-level shifts in law which change the relationships between different actors in a local authority area. Where they are workable – and that won’t be everywhere – they seem sensible provisions in line with the emphasis on parochial relationality.

A second, more complex example concerns predetermination. This issue typically concerns whether councillors have made up their minds about planning decisions or are seen to have done so before they have attended the meeting when the decisions is due to be made. The Monitoring Officer, the authority’s in-house lawyer, is often called upon to assist in these situations. But the Localism Act ‘makes it clear that it is proper for councillors to play an active part in local discussions, and that they should not be liable to legal challenge as a result.’ (*Plain English Guide*) This is a fascinating example of how national law interrelates with local commitment and trust. There is often a great deal of frustration and uncertainty as to what a councillor can and cannot do in complex planning issues. This provision is intended to overcome it by providing security against prosecution.

## Conclusion

Law like the Localism Act changes relationships and local relationships have theological weight. In such an environment, Christians have a legal opportunity to take the initiative in influencing the future shape of their local area. Christian lawyers may therefore have a particular capacity to help community groups understand their legal freedoms and so encourage them to seek the common good of their local area.

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<sup>1</sup> Cf. O’Donovan, O., *The Ways of Judgment*, Eerdmans, 2005