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# Irretrievable Breakdown?

## Disestablishment and the Church of England

*by Julian Rivers*

### Summary

Any discussion of religious establishment raises fundamental questions about the nature and relationship of church and state. Before addressing specific issues within the establishment debate, this paper seeks to identify the Christian understanding of these two institutions and discusses various models for their interrelationship. It concludes that while some reforms are desirable, the principle of Christian establishment is correct.

### Introduction

Religious disestablishment is on the cards. From within the Church of England there are signs of increasing dissatisfaction with the role of the Government in church affairs<sup>1</sup>. The moment the Conservative party no longer has a majority in the House of Commons, constitutional reform becomes a serious possibility with the composition of the House of Lords and the role of the monarch high on the agenda. Recent comments by the Prince of Wales question the nature of church-state relations. Wherever the impetus for change lies, we must be prepared to see the relationship of the state to religion generally and Christianity in particular radically challenged in the near future.

Establishment is a word of no certain meaning. In a sense which no longer has currency in this country it can mean the unity of the state and the church as in mediaeval Christendom. On this account, the church was disestablished by the Toleration Act 1689. Most commonly, a religion is established where there is some degree of organisational overlap between church and state. This is the sense in which the Church of England is established and it will be adopted in this paper. Again, a religion is established when the state, in its institutions and laws, tends to reflect the values of that religion. Finally, there is the social fact of establishment, which occurs when a majority of individuals in a state is committed to a religion.

Much recent debate about religious establishment has been driven by a false understanding of both the nature of the church and the state. The church is perceived as one interest group among many, not significantly different from a football club. The state is perceived as that body that in a neutral fashion regulates the activity of all these different interest groups ensuring that each is as free as possible. It must not be biased towards any one group, or the worldview that group represents.

### 1. The Christian Vision of Church and State

The Christian message is the proclamation of the kingdom of God, that is, the authority of the Lord Jesus Christ over all people and all areas of life. God gave public demonstration of this through the death and resurrection of Christ, it is proclaimed and partly seen by the power of the Holy Spirit today, and it will be fulfilled and acknowledged by all on Christ's return in judgement. This authority applies to every aspect of life, both individual and institutional. Christ's authority over the visible church and the state flows both from his authority over the individuals who constitute these institutions and from the fact that they have been specifically ordained

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<sup>1</sup> See Colin Buchanan, *Cut the Connection*, 1994, for a vigorous critique of the present establishment.

for the extension of his kingdom. But the two are not identical and the issue of religious establishment raises the question of the correct relationship between them. What is the nature, function and mode of action of church and state?

### ***The Church***

Within the protestant tradition, the church is regarded primarily as the invisible body of the elect. The church becomes visible in Christian profession and conduct, in the ministry of the Word and the sacraments, and in external organisation, government and discipline. While one recognises the inevitable presence of unbelievers and the periodic rise of false teachers within the visible church, its essence and hope is still the invisible church. The purpose of the church is clear: it is to be a witness to the saving power of Christ in both word and deed, calling all people to a life of repentance and faith in him. Its mode of action is limited by its nature: through loving persuasion and, if ultimately necessary, exclusion from its corporate life.

### ***The Nature and Function of the State***

The state is not the church but neither is it fundamentally in opposition to the church. We are able in principle to give to Caesar what is Caesar's and to God what is God's (Matthew 22:21) since the state is an authority established by God (Romans 13:1, Titus 3:1). While it is capable of great evil, its purpose is to be subjected to the highest authority of Christ (Ephesians 1:20, 1 Peter 3:22). It is the fear of Christ as Lord of lords (Psalm 2) that leads us to submit to this authority.

There is less certainty about the correct function or purpose of the state. Some aspects are, however, plain. 1 Timothy 2:1-7 is a key passage here. Prayers are to be offered for all those in authority "that we may live peaceful and quiet lives in all godliness and holiness. This is good, and pleases God our Saviour, who wants all men to be saved and come to a knowledge of the truth." One function of the state is therefore to preserve peace and good order that the church may be free to proclaim the gospel. But is the state limited in its function to the maintenance of defence and the protection of life, liberty and property through the criminal law? The task of civil authorities is expressed in the New Testament (1 Peter 2:14) both negatively (to punish the wrongdoer) and positively (to commend those who do what is right) and Calvin was in no doubt that the state could not effectively maintain the second table of the Ten Commandments without a concern for the first (Institutes IV.xx.9). Calvinist and Thomist alike can agree that at a fundamental level the state should be concerned that all people love God, do his will and believe on the one he sent. The Christian can be wholeheartedly a servant of the state, precisely because basic objectives are shared. But where then is religious toleration?

### ***Three Limits to the State's Power***

Even granting that the state is fundamentally concerned to bring all people into a right relationship with Christ, there are three limits to the state's power. First, it is limited by the means available to achieve its ends. It can only discourage by the deprivation of external goods (life, liberty and property, represented by the sword in Romans 13:4 and taxation in Romans 13:6) and encourage by the redistribution of wealth. But the gospel cannot be proclaimed in this way. Jesus eschewed physical retribution on those who refused to believe (Luke 9:51-56) and Paul proceeded by "taking captive every thought and making it obedient to Christ" (2 Corinthians 10:5). Put positively, the way that the state fulfils its duty to extend the kingdom of God is by leaving the church free to proclaim the gospel. Religious freedom is a fundamental principle of the state simply because the

attempt to promote Christianity through the deprivation of external goods distorts the gospel and is counter-productive. This defence of religious liberty is rooted in the Reformation, was developed by seventeenth century English puritans, most notably John Owen, popularised by Locke and Milton, and thus passed into the common heritage of Western civilisation. Although it depends on a highly contentious understanding of truth and religious commitment, it still provides the most resilient defence of religious liberty.<sup>2</sup>

Secondly, the state is limited by the structures that must be put in place to guard against corruption. The state is capable of great evil and part of bringing it under the rule of Christ involves putting structures in place, perhaps of democratic or judicial accountability, that prevent the slide to tyranny. But those structures may themselves prevent the enforcement of desirable policies in the short-term.

Finally, the state is limited by rule of law principles, among which the most significant are that laws must be capable of being obeyed and enforced. This means that legal obligations cannot be too far out of step with society's moral standards, otherwise the failure of the law will bring the whole system into disrepute. A society may simply not be good enough for certain laws.

### ***Duties of Church and State to Each Other***

The duty of the state is thus to preserve the freedom of the church to be the visible body of Christ, and to promote the gospel by the means at its disposal, remembering always that Christ's kingdom "is not of this world". But it may in principle have laws that promote at least external obedience to the law of God and act as the school-master, leading its citizens to Christ. The church also has duties to the state to teach good citizenship, to intercede on its behalf and then to act, as Canon Max Warren<sup>3</sup> put it, by prophesying to the nation, by purifying it and by preparing it for the return of Christ and the consummated kingdom of God into which the kings of the world will bring all their wealth (Revelation 21:24).

## **2. Models of Church-State Relations**

It is possible to identify a spectrum of models for the right relationship between church and state ranging from total separation to complete unity. Five basic models are identified here, and all have had exponents within the Christian tradition.

### ***Complete Separation***

Under this model, the state must be completely independent of religious organisations. Religious freedom is maintained by a "wall of separation" between church and state, for to do otherwise would corrupt the church and affect the free commitment of the individual in matters of faith. The best known example of this approach is the First Amendment (1791) to the US constitution: "Congress shall make no law respecting an establishment of religion, or the free exercise thereof...". Originally, this was intended to protect individual state establishments from interference by the federal organs of government. But the last establishment was dismantled in 1833, and by the Fourteenth Amendment (1868) the principles of the First Amendment were extended to cover individual states as well. On the Christian understanding of this model, the church is free to be the church and justice is maintained by campaigning for individual just laws. One would

<sup>2</sup> Roy Clements, *Can Tolerance Become the Enemy of Christian Freedom?* Cambridge Papers Vol. 1 No. 1, 1992.

<sup>3</sup> *The Functions of a National Church*, Latimer Studies 19, 1984.

want to maintain the *organisational* neutrality of the state, while affirming the *ideological* commitment to a Christian worldview. And no-one can deny the potential vitality of the church in such a system.

The problem with the model of separation is that organisational neutrality tends to collapse into religious neutrality, which itself can become state-sponsored atheism. The Supreme Court interprets the no-establishment clause as requiring no support by the state of any particular religious worldview, and this disproportionately benefits non-theistic worldviews. For example, it is a breach of the no-establishment clause to make rooms available during school hours for students to pray, let alone to have official school prayers, even when students are permitted to opt out. The category of "religion" masks the fact that when the state refuses to promote a religious worldview, it ends up promoting an irreligious one.

The degree to which this is a problem depends on the scope of the public sphere. Where the state is a minimal one, merely concerned with defence and basic criminal law, ideological "neutrality" is largely unproblematic, simply because most worldviews concur in what is desirable in these fields. But as the role of the state expands, so atheistic ideology becomes more pervasive. The problem is most severe in Marxist countries, where no distinction between public and private spheres is maintained. The state cares for everything and everybody, including those deluded into disagreeing with it. To witness to your faith is thus a breach of state neutrality on matters of religious belief. In Western countries, as the role of the state expands to cover health, education, employment and social security, the space left to those of any religious convictions to mould their lives according to their faith is correspondingly reduced.

### ***Neutral Co-operation***

The first model strives for religious neutrality by exclusion. In practice it turns out to be biased towards atheism and intolerant. The second model strives for religious neutrality but by even-handed co-operation. It recognises the ultimate significance of faith in people's lives and where functions of the state and religious concerns overlap, the state seeks to work together with the organisations or religions in question. The best example of this approach is in the law of marriage. It is possible to get married according to the rites of the Church of England, by secular ceremony in the Registrar's office, according to the usage of Quakers or Jews, and according to any other ceremony which takes place in a building certified as a place of public religious worship and registered as a place for the solemnization of marriage. Thus in theory the whole gamut of religious convictions is covered.

Some would like to apply this model to the issue of religious representation in the House of Lords. Lord Hailsham has argued that the second chamber functions best as a House of "experts" from all walks of life<sup>4</sup>. This model would require representation by the leaders of religious groups according to their share of allegiance, thus the present situation where 26 bishops of the Church of England sit by right and a few others, notably the Chief Rabbi, by the whim of Prime Ministerial patronage is imbalanced. Of course, one might reject this quasi-democratic understanding of the House of Lords in favour of one which sees it as a guardian of fundamental rights against unjustified incursions by the Commons. This would justify a disproportionate representation of those committed to the ideological foundations of the state.

There is no doubt that the approach of neutral cooperation can work in individual instances, but is it appropriate as an overall strategy? In one case, it may well be the outcome of a principled refusal to persuade others of the truth of Christianity in any way other than by rational debate. In another, it may be dictated by the need for structures that preserve the justice of state action. However, total neutrality on religious questions is impossible to

achieve, and the drive to achieve it leads inexorably back to the first model of intolerance. The state cannot avoid taking "religious" decisions as is well illustrated by a closer look at the example of marriage above. On the surface, all faiths are treated equally, but in practice various groups cannot be registered: the Scientologists because they do not worship, the Exclusive Brethren because they do not worship in public. Only a tiny proportion of Sikh and Hindu temples and Muslim Mosques are registered, arguably because of the requirement to use English marriage vows, and one writer rounds off by suggesting that atheists might find offensive the questionable definition of legal marriage as lifelong.<sup>5</sup> But why stop there? What about homosexuals and polygamists and those advocating total sexual licence? A choice must be made between one legal institution of marriage, a range of legal forms, or no legal institution of marriage. But none of these choices is a position of neutrality; at least one conflicting religion/worldview must be excluded from public life.

This is just one example of the fact that while ideological separation is intolerant, ideological co-operation is incoherent. States must be conceived of as persons or at least consistent systems, and every attempt to interpret the state results in favouring some particular worldview on basic questions such as human nature, the definition of the good and the value of religious commitment. Modern liberalism's search for the ideologically neutral state is doomed to failure, for in practice the formal and informal structures of any society will make some worldviews easier to live out and some harder. The key question is which worldview is to be the central one?

### ***Symbolic Commitment***

The discussion of the first two models demonstrates that the state must be constructed around a coherent conception of what it means to live a good life. Further, if the state is to do justice to all members of society it must be built on a Christian worldview, with all that that entails for religious toleration. That worldview is rendered vulnerable by the type of separation that one saw in communist Europe and is seeing increasingly in the capitalist United States. In what ways, then, may the state legitimately mark out Christianity as its foundational worldview? At what point does the state become unjust, or compromise the freedom of the church?

Perhaps the least obtrusive way to acknowledge the authority of God over the state is by symbolic commitment. Those countries that have a foundational constitutional document sometimes do just this. For example, the Canadian constitution (1982) starts: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law...", the Australian (1900) starts: "Whereas the people...humbly relying on the blessing of Almighty God...", and the German constitution (1949) opens: "Conscious of their responsibility before God and people...". The United States also seems to have made such a commitment when in 1956 it sanctioned the motto "In God we trust". Such statements perform a valuable function in reminding governments that the will of the people is not the ultimate arbiter, but of course in practice they are not allowed to have an impact on public life. Their effect is intangible. Furthermore, the concept of God is open to interpretation in a way that that of Jesus Christ is not. If it is correct that Christ is King of kings, there can be no reason why that should not be symbolically recognised as well.

The symbolic recognition of Christ as ultimate ruler can be found in both the Irish and the British constitutions. The Irish constitution (1937) commences: "In the name of the most Holy Trinity, from whom is all authority and to whom, as our final

<sup>4</sup> Lord Hailsham, *The Dilemma of Democracy*, London, 1978.

<sup>5</sup> A. Bradney, *Family Law*, Vol. 19, 408, 1989.

end, all actions both of men and states must be referred, We, the people of Eire, humbly acknowledging all our obligations to our Divine Lord Jesus Christ..." In fact, in Eire, this statement is of more than symbolic significance since it has been used in the legal interpretation of the constitution. Within the United Kingdom, in the absence of a written constitution, this symbolic function is represented by the coronation of the monarch. The Queen, while entering into office by hereditary right, is crowned by the Archbishop, and the service of accession makes the submission of the Queen to the rule of the trinitarian God crystal clear. House of Commons prayers, perfunctory and ill-attended though they may be, reinforce the idea that Parliament acknowledges that its authority derives in the last instance not from the will of the people but from God, to rule justly and wisely according to his will. The design of the British flag and the national anthem reinforce this worldview.

The role of the monarch captures this fundamentally accurate vision of church and state as separate institutions under the authority of Christ. "The Sovereign, acting according to the laws of the realm, is the highest power under God in the kingdom and has supreme authority over all persons in all causes, ecclesiastical as well as civil."<sup>6</sup> But just as in practice, the political rule of the Queen is exercised on the advice of her political ministers, and legislation is only passed with the consent of Lords and Commons, so also the Queen may not be a minister of the Word and sacraments (Art.37 of the Thirty-nine Articles) and may only exercise her ecclesiastical judicial function through duly appointed judges. By convention the Queen also assents to measures of Synod presented to her. The detail might cause concern here but the broad picture is correct.

The Christian consecration of the monarch could conceivably be performed by any Christian denomination, since non-conformist objections to establishment for the most part concern Anglican attitudes to church government and membership. However, problems might arise with a (conservative) Roman Catholic consecration in that this vision of church and state could imply subordination of the state to the authority of the Pope.

### **Establishment**

But may the state go further, and instead of establishing an *ideology* as foundational, establish an *organisation* as best suited to serve the spiritual needs of the nation? That is the question of establishment. Now establishment is a matter of degree. The role of the state, as we have already seen, is to enable all people to come freely into relationship with God in Christ, but it must not use means that God has not sanctioned in a well-meaning but misguided attempt to do this, and it must not prevent the church from being the church. If these conditions can be fulfilled, there is nothing wrong in principle with establishment.

Some would suggest that in practice the conditions just outlined cannot be fulfilled. Any conceivable organisational recognition would tempt the church to adjust its message to the wishes of the state and produce an unfortunate confusion of understanding of the nature of the church as the servant of all with the nature of the state as the master of all. Any connection damns the church by association. But this is to misunderstand the nature of the state, which is in principle a God-ordained institution for the maintenance of peace and the promotion, within its means, of godliness. The church is not damned by association with the state as an institution, although it might be by association with any particular state office holder. Every establishment must be looked at in detail first.

An arrangement where people are free to seek spiritual guidance where they please, but there is a bias towards the established church is institutionalised in prisons, hospitals and the armed services. For example, a prisoner who has declared a *bona fide* religious allegiance is to be granted access to a minister of

his religion and allowed to follow his faith to the degree that that is practicable. But each prison has an Anglican chaplain who may be seen at the request of any prisoner, regardless of allegiance, and who has a duty to visit the sick and those under special confinement, given that the prisoner is willing.<sup>7</sup> The way in which the state deliberately makes it easier for the Church of England to reach those likely to respond to the gospel while protecting the freedom of each person to worship as they see fit is structurally superb. The assumption that the established church must have access coupled with a basic commitment to fairness actually protects the interests of other faiths. Of course, if at some stage in the future, a government sought to use the chaplaincy to promote a particular anti-Christian view, the church would have to reject the existing opportunities.

The Church of Scotland represents an alternative model of establishment, which only just extends beyond mere symbolic commitment. It has always maintained that its head is Jesus Christ and no earthly ruler, and that it exercises a jurisdiction complementary to and not derived from the jurisdiction of the state. In fact, the jurisdiction of the Pope was ended by Act of Parliament in 1560, and by the General Assembly Act 1592 spiritual and ecclesiastical jurisdiction was vested solely in the church. The royal claim and interest was preserved by the right to attend the General Assembly and appoint the meeting of the next Assembly, the residue of which right is still maintained by the fact that the Lord High Commissioner informs the monarch of the date of the next meeting. Apart from that, the Church of Scotland Act 1921 appears to concede the total autonomy of the Church of Scotland in spiritual matters.

### **Complete Unity**

Finally there is the model of complete unity found typically in mediaeval Christendom and defended in sixteenth century England by Hooker. The state and the church are united. The one consists of the people governing themselves in temporal matters and the other those same people acting in spiritual matters. The last whispers of this approach can be found in the old joke: "Religion (if none write C of E)". Such models can still be found today in fundamentalist Islamic states, African tribal societies and Christian Orthodox states.

This model is unacceptable for a number of reasons. Firstly, it assumes that membership of civil society, largely an accident of birth, carries with it membership of religious society. For a religion which consists of outward ceremony, this is plausible – sacrificing to Caesar is then little different from casting a vote – but true faith consists in the free commitment of one's life to Christ and cannot be tested by physical location in a "Christian" state. In other words, the model does not leave the church free to be the church by excluding non-Christians and confronting the state where necessary.

Secondly, the model tends towards religious persecution, even in the case of Christianity. The weapon of the state is the sword, but to extend the kingdom of God Christians may not use "the weapons of the world" (2 Corinthians 10:4). However, the temptation to enforce faith is often too strong for weak human beings, and church discipline is confused with peace and good order.

## **3. Issues Within the Establishment Debate**

The prime benefit of the present establishment lies in the symbolic commitment of the United Kingdom to Christianity.

The alternative to this is not religious neutrality but secular

<sup>6</sup> Halsbury's Laws of England, Vol. 14 (Ecclesiastical Law) para. 352.

<sup>7</sup> St John A. Robilliard, *Religion and the Law*, 1984, Ch. 8.

humanism as a foundational ideology. The establishment gives church and people a remarkable degree of access to each other. The division of the whole of the country into parishes and the assumption that the parish church is a first port of call for those seeking help is invaluable. In addition, one could point to certain semi-institutionalised features of establishment such as Remembrance Day services. Of course, this is largely a by-product of the historical significance of the Church of England and is not itself a feature of the establishment as such. It is very hard to assess what effect disestablishment would have on this attitude.

However, any establishment of Christianity must leave the church free to be the church. Concern has been expressed that the structures of the Church of England deviate unacceptably from this ideal in four areas: membership and membership rights, the appointment of officers, financial management and legislation. In assessing the impact of establishment, one must remember that where the church has the power to change some undesirable feature of its life, the fault lies with the church and not with the establishment.

### ***Membership and Membership Rights***

In former times all the inhabitants of a parish were deemed to be members of the Church of England, in the absence of evidence to the contrary. But a current definition is that members are those "baptised persons giving general allegiance to the ordinances and liturgy of the Church of England as by law established and not owing allegiance to a religious body whose tenets are inconsistent with those of the established church."<sup>8</sup> Membership is not lost by irregular attendance, although it may be by total failure to attend. A minister may only refuse to baptise an infant from his parish for the purposes of preparing and instructing parents, guardians and godparents and so in effect may not go behind the professions of faith required from sponsors during the baptismal service. Concerns are raised at this point on two fronts: there is no discretion on the part of the minister to refuse baptism where the sponsors' behaviour gives the lie to their profession, nor is there any way of disciplining the errant member. However, it must be remembered that the issue of who is to be baptised is one internal to the church (appeal lies to the Bishop, who decides as he thinks fit) and since the only acceptable way of disciplining an errant member is by exclusion (1 Corinthians 5:13), their non-attendance is barely significant here.

People resident in a parish and not members of the Church of England have certain rights, namely to take part in the election of churchwardens, of marriage in the church and burial in the churchyard. The first will be dealt with below. It is an offence for a clergyman to refuse to marry a qualified person resident in his parish, unless one party is divorced and the former spouse survives. Since marriage is an institution of God valid regardless of faith (Genesis 2:24) this is in principle not problematic, but at one point in the marriage service the couple are addressed as "servants" of God, and there is the symbolism of taking vows in the sight of God. Burial is more difficult since the minister must, unless otherwise requested, say divine service over the corpse or ashes of the departed unless (in strict law) they were unbaptized, excommunicated or had committed suicide while sane. In fact, the wording of the service is remarkably uncommitted on the question of the salvation of the departed. The only clear sign is that he is addressed as "brother". The point is that the acceptability of these public functions of the church depends on whether they can be fulfilled with integrity. If one considers a rewording of these services possible such that no implication of faith is made, the question resolves itself into one of state restrictions on church legislation.

### ***The Appointment of Officers***

Various links with the state can be found in the procedures for appointing churchwardens, deacons, priests and bishops. Churchwardens must be actual communicant members of the

Church of England on the electoral roll of the parish to which they are appointed. This means that as well as being members on the definition above, they must have attended the church for at least six months and have taken communion at least three times in the preceding twelve months according to the use of the Church of England. Two are appointed annually at a meeting of the incumbent and parishioners consisting of those on the electoral roll and anyone resident in the parish and registered for the purposes of local elections by virtue of that residence. If the minister and the parishioners cannot agree, one warden is elected by each. It is thus possible for non-members to be influential in who becomes churchwarden. Yet it must not be forgotten that they can only appoint a regular church member who can always refuse to stand. Any possible conflict between non-members and incumbent must therefore also be a conflict within the church. Our only concern then is the possibility of non-members supporting a minority of members and overriding the wishes of the majority. One suspects that this hardly happens in practice.

The incumbent of a parish is appointed by whoever has the gift of the benefice, and quite often this can be a non-member of the Church. This was the issue that dogged the Church of Scotland throughout the eighteenth and nineteenth centuries, leading to the Disruption of 1843. The Parochial Church Council can now make suggestions (without naming names) as to the type of person suitable, but these suggestions are not binding. Of course, the choice of incumbent is limited to ordained clergy who fulfil the church's own requirements as to suitability. Although the Bishop has an absolute discretion as to whom he shall ordain, that person must (among other qualifications) "be found on careful and diligent examination to possess a sufficient knowledge of holy scripture, of the doctrine, discipline and worship of the Church of England, and be of virtuous conversation, without crime, of good repute and a wholesome example and pattern to the flock of Christ." Thus the system of patronage carries with it a danger that a particular skill or need will not be correctly considered, but no danger that these basic qualifications will not be met. But the issue of patronage is not straightforwardly a feature of the establishment. Even where held by the Crown, a right of patronage is a type of private property right that may be held and transferred (but not sold) by private persons. In the normal course of affairs, the church must bargain for increased powers of appointment. Legislation disestablishing the church need not carry with it an expropriation of these rights for the benefit of the church, although the disestablishment of the Church of Wales in 1920 had precisely this effect. Non-member patronage is thus more a historical accident than a necessary feature of establishment.

Bishops are appointed by the Sovereign on the advice of the Prime Minister. The Ecclesiastical Appointments Commission forwards two names to the Prime Minister who is free to choose either. As with ministers, the general qualifications must be fulfilled. Both must be "godly and well-learned men, persuaded that they are truly called to this ministration according to the will of our Lord Jesus Christ and the order of this realm; and that the holy scriptures contain sufficiently all doctrine required of necessity for eternal salvation through faith in Jesus Christ..." But the non-Christian Prime Minister might differ from the body of the Church in his view as to the preferable of the two. In this context, the suggestions of the van Straubenzee committee on senior church appointments (1992) are to be welcomed. If these proposals are implemented, the Prime Minister will be by-passed, and certain senior appointments (suffragan bishops, deans and others) will be made by the Crown on the advice of the Archbishops alone.

Thus non-members of the Church of England have a small part to play in the appointment of the church's servants. This deviates from the New Testament ideal but not to the extent of foisting unqualified men and women on the church. At most there will be a difference of view as to suitability.

<sup>8</sup> Halsbury *op. cit.* para. 346.

## Financial Management

A sizeable proportion – around 25 per cent – of the church's finances are held and managed by the Church Commissioners, and concern has been expressed about who these are and the way they operate.

The Church Commissioners consist of a large body of people, some holding their position *ex officio*, some being appointed. Every lay Commissioner must declare that he is a member of the Church of England, except those lay Commissioners who hold their position *ex officio*. These amount to 12 people holding high state office. The powers of the General Meeting of the Commissioners are similar to those of shareholders in a large PLC, and in practice the funds and property are managed by five committees under the oversight and guidance of the Board of Governors. This latter body consists of the two Archbishops, the three Estates Commissioners, 6 diocesan bishops, 2 deans, 6 clerks in holy orders, and 8 laymen, 6 of whom are appointed by the General Synod. In practice those Church Commissioners who are not members of the Church of England and thus hold their posts *ex officio* play no part in the government of the church's funds.

In 1991, the Bishop of Oxford and others brought legal action further to restrict on ethical grounds the possible investments the Assets Committee (consisting entirely of clergy and lay members of the Church) might make<sup>9</sup>. While the court agreed that it was proper for any trustees of property to avoid investments that directly contradicted the purposes of the trust (e.g. a temperance society investing in a brewery), their prime duty was to maximise their returns consistent with commercial prudence. They could not make a less advantageous investment where its ethical quality was at best controversial. But it is important to remember that these restrictions apply to all religious organisations that have property to administer for the purposes of the organisation. The only way a financially detrimental but ethically acceptable investment policy may be followed is if provision is specifically made for this in the trust deed or by legislative change. The problem of ethical investment is thus one of the general law and indeed the Church of England may be best placed to campaign for change.

## Legislation

At various points we have seen that an issue is not properly to be counted part of the establishment if it can be controlled by the church alone, nor is it part of the establishment if it is part of the general law applying to all religious groups. The key issue thus becomes the restrictions placed by Parliament on the church's autonomy.

The General Synod can legislate by canon or measure. A canon requires the royal assent (which by convention it always receives, and the Sovereign must be a communicant member of the Church of England anyway) and may not be contrary to the royal prerogative or the statutes, laws and customs of the Realm. These restrictions apply to every organisation, religious or otherwise, and so are irrelevant for our purposes. Measures must be considered and reported on by the Ecclesiastical Committee of Parliament and pass both Houses before receiving royal assent. Parliament may only accept or reject a proposed measure; there can be no amendment. Measures have the force of an Act of

Parliament and are capable of affecting any matter of law except the procedure just outlined. Thus the General Synod can (in theory) initiate legislation on any matter of UK law. This justifies the need for Parliamentary scrutiny and approval. But approval of a largely non-Christian Parliament is also required for any change to those aspects of church life regulated by the general law, which in any other denomination would be matters private to that denomination, and there have been times when Parliament has thwarted the wishes of the General Synod in such matters, most notably in the proposed reform of the Book of Common Prayer in 1927-8 and the Clergy Ordination Measure 1989 (actually passed the following year). The fact that one might welcome the outcome is no reason to defend the procedure. Indeed, one might speculate whether such resistance against the wishes of the church in matters of doctrine and worship would not now breach various international commitments to religious freedom. Since the Church of England (Worship and Doctrine) Measure 1974, the church has achieved a large degree of autonomy in this area, except that a provision to abolish, replace or amend the Book of Common Prayer must be contained in an Act or Measure. The overall effect of these provisions is thus not centrally the control of Parliament over the affairs of the church, but an obstacle to change desired by the church. And the significance one attaches to that depends on one's view of the necessity for change.

## Conclusions

Within the Church of England there is a fear that any changes to the current structures will "cause the whole thing to unravel." This fear is well-founded for the pressure for constitutional reform grows ever stronger. Disillusionment with the monarchy, executive tyranny, the neglect of fundamental rights and European integration all conspire to make the option of a continental-style written constitution in the liberal-democratic tradition, avowedly neutral on issues of religion, an increasingly attractive option to many. Should such a state of affairs come to pass, it will be hard to maintain any explicit constitutional recognition of the lordship of Jesus Christ.

However, it is at least arguable that complete constitutional regeneration is the only way to remove the principles of Scottish and English establishment contained in the Act of Union 1707. On this view, the protestant succession, Scottish presbyterianism and the Westminster Confession, English episcopalianism and the Thirty-nine Articles are matters of fundamental law which even Parliament cannot change. Nevertheless, some of the concerns outlined in this paper can be met without undermining the basic commitment to establishment. The franchise for the election of churchwardens could be restricted to those on the electoral roll, private patronage could gradually be recovered and placed in the hands of church and congregation, and a measure could be introduced to enable the Church Commissioners to adopt a more ethical investment policy. Such reform is necessary if the church is to be free. Yet at the same time, the fundamental subservience of the state to the authority of Christ – expressed organisationally where appropriate – should not lightly be abandoned.

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<sup>9</sup> *Harries v Church Commrs for England* 2 All ER 300 Chd, 1993.