LEGAL ASPECTS OF THE HISTORY OF CHURCH AND STATE

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A convenient starting point for these reflections is the Ordinance of William I, separating the Spiritual and Temporal Jurisdictions, issued some time between 1070 and 1076. If strictly adhered to this might have prevented some subsequent conflicts, but as we know, the next hundred years saw a number of conflicts in the course of the Investiture Contest leading to the murder of Thomas Becket in 1170. Further conflict in the reign of King John ended in Magna Carta of which Archbishop Stephen Langton is thought to have been the chief inspiration.

The subsequent reign brought to the fore conflicts over finance as the King more and more frequently demanded substantial grants from the clergy. These increased under Edward I and led to the frequent summoning at royal request of representative assemblies of the clergy which gradually *de facto* superseded the provincial councils and became known as the Convocations. Throughout the rest of the Middle Ages it became virtually impossible for the Archbishops to summon their clergy in synod without royal permission.

A further source of conflict was over episcopal appointments. Formally bishops were elected by the deans and chapters, or in the case of monastic cathedrals the monastic communities; the permission of the Crown to hold an election was required and formally the Crown's confirmation of the election also. In fact the King frequently tried to influence the choice of the new bishop but increasingly popes intervened and appointed bishops in defiance of royal wishes. And this led to the Statute of Provisors in 1350 and subsequent similar legislation. Papal appointments were also affected by the Statute of Praemunire in 1353, which became widely used.

It is not, I think, always realised that for the most part Henry VIII's legislation concerning the Church simply put into statutory form what had gradually developed as usual practice, the chief difference being the removal of any control by the papacy. Some papal powers were retained but transferred to the Archbishop of Canterbury e.g. the power to grant degrees which are not just honorary, and certain dispensations such as the power to ordain a person deacon and priest in the same service.

The disuse of legislation by the Convocations after the early eighteenth century meant that any ecclesiastical legislation was parliamentary and this brought areas of church life which had previously been regarded as under the canons of the convocations under parliamentary control. An effect of this was that when in the period 1830 to 1850 a number of changes in Church institutions was brought about they had all to be done by statute and consequently when a hundred years later we had the revision of the

Canon Law many of the new canons had to be supported by Acts of Parliament and the approval of the Home Office obtained so that the Queen could be advised to give Her assent.

This situation was not changed in principle by the Enabling Act which provided a somewhat quicker means of legislation avoiding the necessity for everything to go through the full procedure of three readings in each House of Parliament. It provided instead a special committee representing both Houses to scrutinise Church Measures and report on their expediency after which the Measure was accepted or rejected by the two Houses. The major instances of rejection have been the two Prayer Book Measures of 1927 and 1928, and the Measure establishing a diocese of Shrewsbury. These have been the formal rejections but the views of the parliamentary committee have had considerable influence on the formulation of church legislation. During the process of canon law revision a special committee representing both Houses of Parliament was set up to consult with the Canon Law steering committee about proposed changes. Two of these caused much discussion, namely the proposed canon concerning the secrecy of the confessional and the canon about the marriage of those not baptised. Both these had to be dropped as certain not to get through parliament. More recent has been the controversy over the Measure concerning the discipline of churchwardens which had to be taken back to the Synod and revised.

In 1974 there was a further important change in parliament's control of church legislation when the Worship and Doctrine Measure gave the Synod greater freedom in those areas. The Prayer Book remains permanently available and protected but alternative forms of service are under the control of the Synod. The freedom which the Measure gives in the matter of doctrine has, however, given rise to a good deal of concern because there seems to be no way of restricting the Synod in this area as there is to some extent over liturgy and at a time when there are important issues on which the Church is deeply divided it seems to many that it is possible for them to be legislated on at one particular time by a Synod under the control of one party in the Church.

Over centuries the legislative relationship of Church and State has been viewed in differing ways. When the Church was one conflicts were internal, generally between the State and a section of the clergy. The call for freedom for the Church meant usually freedom from State interference in appointments or freedom for the clergy to enforce lay observance of scriptural or canonical rules. After the Reformation a complicated situation developed because of the existence of differing religious groups and their relationship to the law. That continued until well into the nineteenth century. It is a mistake to suppose that any religious organisation can ever totally escape control by the law, but the form of that control varies a great deal. Where a church is 'established' the control can take the form of various degrees of legislative involvement in its affairs. Where a church is not established the control is more akin to that exercised in relation to any other public organisation.

The Church of England has a special relationship to the State which involves it in special responsibilities and duties. Most of these are under review from time to time and as has been shown already important changes have been taking place which give the Church greater freedom to order its affairs. One important change which has not been mentioned is different from the others in that it rests solely on agreement. Legally the appointment of bishops remains as established by the legislation of Henry VIII, but the practice has varied through degrees of consultation. There is now a formal consultation worked out initially between representatives of the Standing Committee of the General Synod and Civil Servants appointed by the Prime Minister of the time (Lord Callaghan) and endorsed by the leaders of the other main political parties. By this agreement a Crown Appointments Commission represents the Church on the occasion of a vacancy in the diocese. It consists of the two Archbishops, three clerical and three lay members elected by the General Synod, and four representatives, two clerical and two lay, from the diocese concerned. In attendance are the patronage secretaries of the Prime Minister and of the Archbishops. This Commission presents two names to the Prime Minister who may choose one of them to present to the Queen for appointment or may ask for other names. He may only put forward names coming from the Commission. This procedure rests entirely on agreement and is confidential in practice. There is a variant in the appointment of an Archbishop when the Prime Minister appoints a chairman of the Commission, usually a layman.

There is still a feeling that the State has a responsibility to 'hold the ring' and ensure that no one group or party acquires control of the Church. The changes that have taken place in the last half century have made this responsibility more difficult to exercise.