THE CHANGING LEGAL FRAMEWORK OF ESTABLISHMENT

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This article looks closely at the legal nature of Establishment, both in England and North of the Border. The legal material shows that the two cases are very different. The Act of Supremacy 1558 and related legislation enable the English church's position to be presented so as to make it one aspect of the State, and twentieth-century case-law has tended to confirm that understanding. The Scottish kirk enjoys statutory autonomy under the Church of Scotland Act 1921, and again case-law emphasises the reality of its exemption from some of the usual jurisdiction of the secular authorities and courts (though its scope may be becoming less clear-cut in the light of developments within the European Community). The author asks how, in the English context, the legal analysis relates to the reality of the English situation, as seen through the insights of other disciplines, to the role of the Church of England nationally and locally, and to the, sometimes confrontational, relationship between Synod and Parliament.

It has been a fairly constant theme of mine to lament the narrow focus of much of the public discussion of Establishment.[1] The focus is almost always on the more picturesque aspects of our unwritten constitution: the Sovereign as Supreme Governor and as Defender of the Faith; the Coronation Service, and the presence in Parliament of the Lords Spiritual. I have argued that we need to look at the whole range of issues (including the churches' role in education, in hospital, prison, and military chaplaincy work, and in relation to marriage and the burial of the dead) encompassed in that convenient German expression *Staatskirchenrecht*, State and Churches law.

The Dean of Westminster has written of a distinction between 'high' Establishment and 'earthed or low' Establishment.[2] It is a similar distinction to the one I have just drawn, though I am not sure if the language of 'high' and 'low' is quite right; though Wesley Carr does preside over one of the focal points of Establishment, so we can readily forgive the apparent suggestion that one aspect of Establishment is more important than the other. In his 'low' category, he places ideas of national coverage, theologies of place, and service to the whole nation; I would stress their importance.

[1] See my piece 'Establishment in a European Context' in N Doe, M Hill and R Ombres (eds) *English Canon Law: Essays in Honour of Bishop Eric Kemp* (University of Wales Press, 1998), pp 128–138.
[2] W Carr 'A Developing Establishment', *Theology* (January 1999) pp 2–10.

Without in any way changing my stance on the scope of the notion of Establishment, I think that today I am obliged to start by looking more to the legal heartland of the matter, seeking to define the legal essence of Establishment. It is not altogether easy.

I suppose we should begin with section 8 of the Act of Supremacy 1558, the only unrepealed provision of that Act, which provides:

> that suche jurisdictions privileges superiorities and preheminences spirituall and ecclesisticall, as by any spirituall or ecclesiasticall power or aucthorite hathe heretofore bene or may lawfully be exercised or used for the visitacion of the ecclesiastical state and persons, and for reformacion order and correcion of the same and of all maner of errours scismes abuses offences contemptes and enormities, shall for ever by aucthorite of this present Parliament be united and annexed to the imperiall crowne of this realm.

It is from that principle that there flow the powers of the Crown in respect of canon law, expressed in the Submission of the Clergy Act 1533, and to be observed in operation when the General Synod hears read the Royal Licence and Assent to the promulging and execution of a new Canon. It is from that same principle that there flow the powers of the Crown in respect of diocesan and suffragan bishops, and indeed of bishops in foreign countries.[3]

That assertion of royal supremacy had no wider doctrinal content. Indeed the 1533 legislation contains in section 13 of the Ecclesiastical Licences Act, still in force, a remarkable declaration:

> Provyded always that this Acte nor any thyng or thynges therin conteyned shalbe herafter interpreted or expounded that your Grace your nobles and subjects intende by the same to declyne or vary from the congregacion of Christis Churche in any thynges concnyng the veray articles of the Catholyke feith of Christendome; or in any other thenges declared by Holy Scripture and the worde of God necessarie for your and their salvations; but only to make an ordynaunce by policies necessary and convenyente to represse vice and for good conservacion of this realme in pease unytie and tranquylltie...

It is always illuminating to look at another form of Establishment. I will stay in Britain with the Scottish model. Some years ago, Fr Stephen Trott had a private member's motion on the agenda of the General Synod advocating the Scottish model. It gained little support, and I think the Chadwick Commission of 1970 was right in its advice:

[3] Appointment of Bishops Act 1533 (25 Hen 8, c 20): Suffragan Bishops Act 1534 (26 Hen 8, c 14): Suffragan Bishops Act 1898 (61 & 62 Vict, c 11); and the Bishops in Foreign Countries Act 1841 (5 Vict. c 6).

> We cannot take a system of law that has arisen in another part of Britain and impose it on England as though it fitted the facts, or the memories, of English life. We have to take English ecclesiastical polity as we find it and then see how it can be adapted.[4]

The course of the Scottish Reformation, though different from that in England, is instructive. Anyone with a few hours to spare can trace the legal developments in the footnotes to the report of *Free Church of Scotland v Lord Overtoun*.[5] Papal jurisdiction was repudiated in 1560, but the establishment of the Church of Scotland is usually dated from 1567 when it was enacted as follows:

> Our soverane Lord with avise of my Lord Regent and the thre estatis of this present Parliament hes declarit and declaris the foirsaid Kirk [the reformit kirkis of this Realme] to be the onlie trew and haly Kirk of Jesus Christ within this Realme.[6]

Perhaps that was implicit in the English case, but was never expressed with quite that clarity. In England, as we have seen, the Crown retains its powers over church legislation by the need for Royal Assent to the promulging of canons and by the control of Queen in Parliament over the enactment of Measures: it is one of the marks of Establishment. But in Scotland, partly to facilitate the reunion of the United Free Church of Scotland with the Kirk, Parliament enacted the Church of Scotland Act 1921. It has a Schedule containing the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual agreed in the negotiations between the Kirk and the United Free Church of Scotland, and the Act acknowledges the Articles to be lawful. The Articles contain a statement of the separate jurisdiction of the Church in matters spiritual and give the church very considerable freedom in its government. The 1921 Act remains the major statement of the relationship between church and State in Scotland as far as the Church of Scotland is concerned. In terms of the autonomy of the Church, the crucial Article is Article IV:

> IV. This Church, as part of the Universal Church wherein the Lord Jesus Christ has appointed a government in the hands of Church office-bearers, receives from Him, its Divine King and Head, and from Him alone, the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government, and discipline in the Church, including the right to determine all questions concerning membership and office in the Church, the constitution and membership of its Courts, and the mode of election of its office-bearers, and to define the boundaries of the spheres of labour of its ministers and other office-bearers. Recognition by civil authority of the separate and independent government and jurisdiction of this Church

[4] *Church and State: the Report of the Archbishops' Commission* (1970), para 216.
[5] *General Assembly of the Free Church of Scotland v Lord Overtoun, Macalister v Young* 1904, 7 F (HL) 1, 12 SLT 297, [1904] AC 515.
[6] Church Act 1567 (Jas VI, c 6).

> in matters spiritual, in whatever manner such recognition be expressed, does not in any way affect the character of this government and jurisdiction as derived from the Divine Head of the Church alone, or give to the civil authority any right of interference with the proceedings or judgments of the Church within the sphere of its spiritual government and jurisdiction.

The case-law suggests that Article IV is becoming if anything more strongly entrenched.

In *Ballantyne v Wigtown Presbytery*,[7] decided in 1936, there was a dispute about what in English terms would be the union of two benefices. One congregation resisted a proposed merger and demanded the right to elect its own minister forthwith. The courts refused to intervene, the Court of Session by a majority holding that this was an issue of 'government' within Article IV.

Much more recently, in 1995, came *Logan v Dumbarton Presbytery*.[8] The minister of a Church of Scotland parish sought judicial review of disciplinary decisions of the presbytery. The Lord Ordinary gave leave and restrained the presbytery from taking steps to implement its decision pending a full hearing. The presbytery appealed, arguing that in terms of the Church of Scotland Act 1921 the matters raised by the petitioner fell within the exclusive jurisdiction of the Church of Scotland and outside the jurisdiction of the courts. That argument prevailed: as the case involved questions concerning office in the Church, the matter fell within the exclusive jurisdiction of the Church of Scotland in terms of Article IV.

The most recent case of which I am aware is a 1999 decision *Percy v Church of Scotland Board of National Mission*.[9] The appellant held the position of associate minister in a Church of Scotland parish but resigned after an extra-marital relationship. She complained, inter alia, of sexual discrimination, alleging that the Church authorities had not taken similar action against male ministers in similar circumstances. The respondents relied on Article IV. The case was concerned with the disciplining of a minister with regard to her living and, ultimately, her status as such; Article IV excluded every relevant aspect relating to that issue (including natural justice and any statutory rights as to discrimination) from the jurisdiction of any secular court, including the Employment Tribunal system. For the appellant it was argued that the language of Article IV did not make it unambiguously clear that it covered a complaint of sex discrimination. The existence of doubt on that matter opened a door to allow the imposition of European law in respect to sex discrimination and equal treatment between the sexes. That in turn would bring the case within the competence of the Employment Tribunals. The Appeal Tribunal

[7] *Ballantyne v Wigtown Presbytery* 1936 SC 625, 1936 SLT 436.
[8] *Logan v Dumbarton Presbytery* 1995 SLT 1228, OH.
[9] *Percy v Church of Scotland Board of National Mission* 2001 SLT 497. I am grateful to Philip Petchey for this reference.

accepted the Church's arguments. Lord Johnston, giving its judgment, said:

> The important matter is that Parliament has allowed the Church an exclusive jurisdiction and if, therefore, a particular matter falls within that jurisdiction as defined in this case by Article IV, the Church is immune from interference in whatever it does in the furtherance of matters contained within that Article, which must extend not only to natural justice but also to any statute which could otherwise apply such as the Sex Discrimination Act.

In a later passage, the Appeal Tribunal examined whether it was possible, at the very least, to construe Article IV in such a way as to be compatible with, for example, the Equal Treatment Directive. It held, however, that 'the result of such an exercise would be such a distortion of the substance and aims of section 1 and Article IV as to exclude such a compliance being possible'.[10] The position seems to be that the Declaratory Articles are treated as overriding any other rule of law, even one derived from European sources. I must confess to finding that surprising.

The case went on appeal to the Court of Session, and Lord President Rodger, with whom Lord Cameron of Lochbroom and Lord Caplan agreed, regarded the case as turning primarily on the question whether the appellant was an 'employee'. He recognised the differences between the offices of a parish minister and an associate minister, but, citing *Diocese of Southwark v Coker*, said that:

> Simply on the basis of the observations of Mummery LJ, I would start from the presumption—rebuttable, of course—that, where the appointment was being made to a recognised form of ministry within the Church and where the duties of that ministry would be essentially spiritual, there would be no intention that the arrangements made with the minister would give rise to obligations enforceable in the civil law.

The Lord President's conclusion that the agreement between the appellant and the respondents was not intended to constitute a contract in our civil law was sufficient to dispose of the appeal because it entailed the further conclusion that the appellant was not 'employed' by the respondents. The point about European law did not fall for decision.

For present purposes, it is clear that in Scotland there is Establishment coupled with a high degree of autonomy for the Established Church. I think we can speak of a Scottish ecclesiastical law, special to the Kirk, though the effect of the Church of Scotland Act 1921 is that the volume of ecclesiastical law North of the Border is distinctly slim.

[10] On a subsidiary issue, the tribunal held 'with some hesitation' that a minister was not an employee, following the English cases of *Davies v Presbyterian Church of Wales* [1986] ICR 280, [1986] 1 All ER 705, [1986] 1 WLR 323 HL and *Diocese of Southwark v Coker* [1998] ICR 140, CA.

If we return South of the Border, the development of ecclesiastical law in recent years owes quite a lot to the Revd Paul Williamson, a persistent litigant. At one of Mr Williamson's earlier appearances in the Chancery Division,[11] Lightman J, addressing an argument based on the *Free Church of Scotland* case, said:

> A religion may be established or unestablished. The essential distinction is that an established religion is subject to state control as regards doctrine, government and discipline, but an unestablished religion (or voluntary association) is not ... In the case of an unestablished church, the question whether an alteration is possible in doctrine without affecting the church's identity involves examination of the system of organisation of the church (or its constitution) whether the alteration falls within any provisions for alteration. In the case of an established church, the legislative sanction of the state is required and such sanction must be found for the alteration.

That was echoed, more briefly, when in giving judgment disposing of various actions and applications by Mr Williamson,[12] Morritt LJ said (in response to the argument that the ordination of women was contrary to the Coronation Oath and the Union with Scotland Act 1806):

> The Church of England is and at all material times has been the established church. As such its doctrines and government were and are susceptible to change by the due processes of law.

But as we have seen, the Church of Scotland is *not* 'subject to state control as regards doctrine, government and discipline', except insofar as the doctrine of the sovereignty of Parliament could lead to the repeal of the Church of Scotland Act 1921. I doubt if Parliament would ever interfere in the *doctrine* of the Church of England: the Church of England (Worship and Doctrine) Measure 1974 did not, as many seem to assume, deal with the Church's doctrine in terms of content, but only in terms of forms of assent to doctrine. It is interesting, though, to compare the difficulties between Church and Parliament over the provisions of what became the Churchwardens Measure 2001 with the complete autonomy the Kirk enjoys in respect to its office-holders.

Perhaps another approach to the task of identifying the essence of Establishment is to look at the two pieces of legislation effecting disestablishment, the Irish Church Act 1869 and the Welsh Church Act 1914. The crucial provisions are almost identical. Taking the 1869 Act, section 2

[11] *Williamson v Archbishop of Canterbury*, the *Times* 25 November 1994.
[12] *Williamson v Archbishop of Canterbury and Others: R v Bishop of Bristol, ex parte Williamson: R v Presidents and Representatives of the House of Bishops, ex parte Williamson* 5 September 1996, CA.

declares that the Church of Ireland 'shall cease to be established by law';[13] section 20 declares that the present ecclesiastical law of Ireland shall be deemed to be binding on the members from time to time 'as if they had mutually contracted and agreed to abide by and observe the same';[14] and section 21 declares that the ecclesiastical law of Ireland shall (with certain exceptions) 'cease to exist as law'.[15] I suppose that in the present company I should also draw attention to section 45, which deals with compensation to vicars-general, chancellors and registrars for loss of office.

I suspect that it is the status of ecclesiastical law which is the defining feature of Establishment. I am not sure that the terms 'public law' and 'private law' are quite the ones to use—they certainly tend to obscure rather than help debate with European colleagues—but there is a quality to the ecclesiastical law of the Established Church which is not possessed by the internal rules or canon law of other churches in England.

The effect of what I have just referred to as 'the status of ecclesiastical law in England' has all sorts of practical effects. It gives the consistory courts and other Church tribunals their 'coercive' jurisdiction. Local authorities and others who may be disinclined to respect the internal rules of the Church of England can be pulled up short when they realise that the consistory court is, as they might put it, a 'real' court, and if they consult their solicitors about their powers to lay unsafe headstones flat, the solicitor will find the bold assertion of jurisdiction by Briden Ch in *Re Keynsham Cemetery*[16] printed in the Weekly Law Reports (where, indeed, the ecclesiastical cases help keep the Family Division series of volumes a viable publishing proposition).

But the legal relationship between Church of England and the State also means that there is no such legal entity as the Church of England, with capacity to sue and be sued. As Mummery LJ said in the context of the attempts by Dr Coker to obtain redress for unfair dismissal in the employment tribunals, 'the Diocese of Southwark was not his employer; it is the district under the supervision of the bishop and is not a legal person with whom a contract can be concluded'.[17] The current discussions about whether the clergy should have employment rights, or possibly the status of employees, involve a search for the appropriate employer, and have to take account of the fact that some of the candidates for that privilege do not exist as legal persons.

In an unpublished paper for a consultation on Establishment held in Windsor in 1999, Martyn Percy and I deployed the notion of 'refraction'.

[13] See the Welsh Church Act 1914 (4 & 5 Geo 5. c 91), s 1.
[14] This is also in the Welsh Church Act 1914, s 1.
[15] Cf the Welsh Church Act 1914, s 3.
[16] *Re Keynsham Cemetery* [2003] 1 WLR 66, Bath and Wells Cons Ct.
[17] *Diocese of Southwark v Coker* [1998] ICR 140, CA.

> Refraction is a proper dispersal of light into its constituent bands of colour, as it passes through a glass prism. In a consideration of Establishment—which is rightly concerned with sociology, theology, law, constitutional matters and politics—it is vital that the whole 'issue' passes through each of these 'prisms', and that each of these then sees how its own truth is affected by the refractive process.

My legal analysis would suggest that the Church of England and the State have an osmotic relationship, the Church being the State in its spiritual aspect, exemplified by the Lords Spiritual sitting alongside their Temporal brothers and sisters. But if we look at writings drawing on insights from disciplines other than the law, we may see things in a slightly different light.

The Dean of Westminster's 'earthed or low establishment', with its emphasis on service to the whole nation, is related to the ideas strongly developed in a remarkable chapter on 'Establishment' by Lord Habgood in his 1983 book, *Church and Nation in a Secular Age*. He begins his analysis of the reality of Establishment by quoting the striking words of Hensley Henson:

> Like a magnificent roof ravaged by the death-watch beetle, yet masking by its splendid appearance a fatal though unheeded weakness, our ancient national Establishment, stripped of meaning and void of power, still dominates us by its aspect of immemorial and unalterable authority. It is a noble façade without a building behind it.[18]

John Habgood's response was that the reality of establishment was expressed through 'a sense of responsibility for the nation as a whole, and in particular for those whose religion is mostly inarticulate and submerged'.[19] He also challenges as unreal in modern conditions the assumption that Establishment carries enormous privilege, a place in 'the Establishment' in another sense, a kind of master class of Top People who together 'fix things' . Rather it carries responsibilities, and he cites Daniel Jenkins' lament that the Church of England sometimes seemed more interested in itself as an institution than in England.[20]

The notion of responsibility to the nation is not without some practical difficulties in an increasingly pluralist society. There is some interest, especially to sociologists of religion, in what has come to be known as 'civic religion', and especially those occasions on which members of the public participate in activities intended to place the life of villages, towns and cities in a religious setting. 'Civic religion' includes such things as annual services for the local emergency services and the judiciary, the recital of prayers before council meetings, the decoration of public places at times

[18] In his *Bishoprick Papers*, 1946, p 47 (but written in 1933).
[19] A sense which he also saw as helping resist the trend to 'denominationalism' in the Church of England.
[20] D Jenkins, *The British*, pp 68, 69.

of religious festival (such as well-dressing in the Peak District), as well as annual Civic services and Remembrance Sunday observances.[21] In her book on *Religion in Britain Since 1945*, Grace Davie asks:

> Are the ceremonies of civil religion becoming less and less appropriate in a society where churchgoing is no longer the norm? Or are they, conversely, more than ever necessary for precisely the same reason?[22]

Adrian Hastings offered a slightly different insight on the notion of responsibility to the nation. Arguing in favour of continued Establishment of the Church of England, he wrote that:

> while the Establishment in the past was, in principle, Erastian; today it actually functions far more as a servant of a healthy dualism, a system in which religion is accepted as not being finally subject to State authority but bearer of a kind of independent sovereignty which merits public recognition. Dualism—recognition that the things of God are not confined within the things of Caesar but, on the contrary, demand acknowledgement both privately and publicly—is and always has been, central to a full and healthy Christianity.[23]

At a time when Government and official Opposition are united in supporting the conduct of a war, about the legitimacy of which a large section of the population, perhaps a majority, have grave doubts, the independent sovereignty of which Adrian Hastings wrote, expressed through the voices of archbishops and synods, has a very obvious importance.

If we take that argument on board, we can perhaps see more clearly the nature of some of the subtle shifts in Church-State relationships in the last century. Let me use two examples:

The Church of England Assembly (Powers) Act 1919, the 'Enabling Act', was an early exercise in devolution, creating in the National Assembly of the Church of England, now the General Synod, a devolved legislature with competence in matters affecting the Church, subject to scrutiny by an Ecclesiastical Committee of Parliament (to protect the constitutional rights of Her Majesty's subjects) and the possibility of veto by either House of Parliament. [I comment, in passing, that while some are irked by the remaining Parliamentary control, the legislative freedom the Church of England enjoys is the envy of those churches which have to use the Private Bill procedure.] One can read the speeches and the reports, but it is still quite difficult to reconstruct at this distance just how that 1919 decision (or the rejection of the 1928 Prayer Book Measure) was actually perceived.

[21] Sophie Gilliat-Ray, *Journal of Contemporary Religion*, vol 14, no 2, 1999.
[22] G Davie, *Religion in Britain Since 1945: Believing without Belonging* (Clarendon Press, 1994), p 87. The last question raises issues as to the role of the representatives of other faiths.
[23] A Hastings, 'The Case for Retaining Establishment' in Modood (ed), *Church, State and Religious Minorities* (London, Policy Studies Institute 1997), p 41.

One possible reading is that it was simply the creation of a more appropriate forum for the consideration of certain types of legislative business, building on the non-legislative experience of the Representative Church Council (which had brought together the Convocations and their Houses of Laymen). Or was it a distancing of State and Church, beginning to be seen as separate entities?

Recent practical experience is ambivalent. The Government seems to be willing for some of the changes which are to be made in the law concerning the preliminaries to marriage to be made by Measure, even though they affect the Marriage Act 1949. That seems to indicate a collaborative, 'more appropriate forum' approach. That is taken even further in the emerging (or established?) convention that ecclesiastical legislation should no longer be initiated in Parliament, but that the initiative should always lie with the Church. Arguments to that effect were successfully used by the Lord Chancellor of the day to discourage Bills introduced into the Lords in the early 1980s to secure the use of the *Book of Common Prayer*. But when you use language about the initiative lying with the Church rather than the State, are you moving towards that dualism of which Adrian Hastings wrote?

Certainly, those of us who have been witnesses before the Ecclesiastical Committee have sometimes had an experience more confrontational than collaborative. Adapting some words of John Habgood, the Committee sometimes asserts that it speaks for the inarticulate religious life of the nation, and not the Synod 'activists', a word which almost always has a faintly pejorative meaning. Lord Bridge contributed a masterly historical account of the work of the Ecclesiastical Committee to his group's report on Synodical Government and I judge that its recent work may not reflect early intentions, and its largely self-selected membership is not necessarily at all representative of the Houses it serves. The women priests legislation was found expedient in the Committee by 16 votes to 11, but was approved in the Commons by 215 votes to 21 and in the (unreformed) Lords by 135 votes to 25.

A second example is the work of the Crown Appointments Commission, as it is still called. Debate on the role of the Prime Minister in the selection of diocesan bishops rumbles on, and my membership of the Commission for its first ten years still inhibits me from complete frankness. I simply make the point that its creation marked a move away from a rather cosy collaboration between Lambeth Palace and Downing Street (Archbishop Coggan was, I sensed, more alarmed by the arrival of the new Commission than the Prime Minister's Appointments Secretary). The General Synod had asked that the Church should have at least *a*, if not *the*, decisive voice, language which necessarily identifies the Church as an entity over against the secular authorities.

If we go from 'high' to 'low, or earthed' Establishment, we find the Church of England in a rather different role. An illustration is provided

by some of the discussions and legislation in recent years in relation to schools. For example, the School Standards and Framework Act 1998 made it rather easier for a school to move from controlled to aided status, the Church accepting responsibility for 15 per cent of the cost of any building works but gaining a stronger position on the school's board of managers. It also clarified the right of the managers of a voluntary school to determine the use to which the building is to be put on a Sunday, facilitating its use as a place of worship. This was achieved as the result of intense negotiations between Church and State (is this privileged access, or confrontation? the General Synod heard of a series of meetings for six hours on a single day with three different teams of Government officials).[24] The same Act also dealt with the appointment of 'reserved teachers'. In effect where a voluntary (i.e. church) school has more than two teachers, the school must have at least one teacher appointed as competent to give religious education in accordance with the tenets of the church concerned; the numbers change with that of the total staff complement.[25] In voluntary or foundation schools having 'a religious character' it is expressly provided that in appointing the head teacher regard may be had to the appointee's 'ability and fitness to preserve and develop the religious character of the school'.[26] In voluntary aided schools, the appointment of any teacher may take into account religious opinions, observance and willingness to give religious education in accordance with the tenets of the church; and conduct incompatible with those tenets may be a ground for dismissal.[27]

More recently we have had renewed debate about the Churches' role in education, partly in response to the Church's own interest generated by Lord Dearing's report,[28] but also by a rather confused set of issues surrounding 'faith schools' generally. One focus of debate was the very strong demand from parents for their children to be taught in Church schools, and the Education Act 2002 left intact the power of Church schools to cope with the numbers of parents seeking a place for their children in excess of places available by using criteria related to religious allegiance and practice.

That of course is not wholly a Church of England matter, as is evidenced by the fact that a Roman Catholic archbishop was a member of Lord Dearing's group. But it illustrates a well-recognised phenomenon, of the Established Church acting effectively as the agent for the several churches (and indeed other faith communities) in England.

There is no denying the historical fact that Establishment was an assertion of English sovereignty against the powers of the papacy, and for some centuries the law of England was discriminatory in its treatment of

[24] See *Report of Proceedings*, 10 February 1998.
[25] School Standards and Framework Act 1998, s 58.
[26] Ibid, s. 60(4).
[27] Ibid, s. 60(5).
[28] *The Way Ahead: Church of England Schools in the New Millennium* (GS 1406).

Roman Catholics. The provisions of the Act of Settlement 1700 barring Roman Catholic succession to the Crown are almost the last traces of that discrimination. Logic and ecumenism argue for their repeal; but what seems right in the quietness of Durham might not be so obvious in the streets of Belfast.

In the title of this paper is the word 'changing'. The legal essence of Establishment is *not* changing: it is in nature either there or it is not. But if we look at the scene through those 'prisms' of sociology, constitutional and political practice, we can observe all sorts of shifts and adaptations. I hope some more will follow, not least the removal from the Prime Minister of any substantive role in the appointment of diocesan bishops.

But my assessment is that the present position of the Church of England does not in reality subject it to State control: in Adrian Hastings' language, it has its independent sovereignty; nor does it give it more advantages as compared with other churches than are consonant with its size and its place in what the Chadwick Commission called 'the facts and memories of English life'.