

centrality in society and its inherent pluralism this is perhaps surprising. But plainly there is room for much more scholarship where this book came from. In the words of Rabindranath Tagore: ‘The highest education is that which does not merely give us information but makes our life in harmony with all existence.’³

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The Courts, the Church and the Constitution: Aspects of the Disruption of 1843

LORD RODGER OF EARLSFERRY

Jean Clark Memorial Lectures, Edinburgh University Press, Edinburgh, 2008,
xvi + 142 pp
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At a discussion in the immediate aftermath of the 1992 General Synod vote on the ordination of women to the priesthood, some of those present were musing on what would happen if Parliament refused to approve the draft Measure. I suggested rather diffidently that, if the legislation were rejected, the Church of England would have to think very hard about its relationship with the state and that the result might look something very like the Disruption. To my astonishment, their reaction was one of blank incomprehension, so I told them the story with which Lord Rodger begins these lectures.

In a prearranged gesture at the opening of the General Assembly of the Church of Scotland in St Andrew’s Church in 1843, the retiring Moderator, Dr Andrew Welsh, led the assembled fathers and brethren in prayer before reading them a long Protest. Following this, he led some 200 ministers of the evangelical party down to Tanfield Hall, where they declared themselves ‘The Church of Scotland Free’ and appointed Dr Thomas Chalmers as Moderator of what they regarded as the ‘true’ General Assembly. Eventually, almost two-fifths of the ministers of the Kirk joined them; and the schism was not finally resolved (and even then not wholly so) until the reunion of the Church of Scotland with the majority of the Free Church in 1929. But though the effects of the Disruption can still be seen and felt today, very few people outside Scotland have ever heard of it; and Lord Rodger sets out both to tell the story in considerable detail and to disabuse readers of any notion that it is merely a mildly interesting and obscure historical byway.

3 R Tagore, *Personality* (London, 1917), p 142.

The Disruption marked the culmination of an increasingly bitter disagreement that had its origins in the Church Patronage Act 1711, which was so deeply resented by the Church of Scotland that it was the subject of an annual Protest by the General Assembly until 1784. The dispute as to whether the right to call a parish minister lay with the patrons or with the local congregation was rooted in conflicting views of the nature of the Church: what the evangelicals declared to be ‘the Crown Rights of the Redeemer’ against what the moderates regarded as order and good government. However, it also had a strong constitutional element, with what Lord Rodger describes as ‘a series of decisions . . . in what would nowadays be described as judicial review proceedings’ (p 2). In 1834, the General Assembly passed the so-called Veto Act, under which a majority of the male communicant heads of families in a parish could reject the patron’s presentee to a vacant charge. When the validity of the Veto Act was challenged in the courts, the Church argued – unsuccessfully – that the effect of the Treaty of Union was that the secular courts did not have jurisdiction over ecclesiastical matters; the Act was overturned and, ultimately, the Disruption was the result.

Lord Rodger’s book expands his Jean Clark Memorial Lectures at the University of Aberdeen in 2007. The first lecture traces the events that led up to the Disruption, while the second looks at the reaction of the courts. Scotland is a small jurisdiction now and was an even smaller one then; and several members of the judiciary were also members of the General Assembly – with the result that, in the first *Auchterarder* case,⁴ Lord Moncreiff found himself sitting in judgment on the validity of the very Veto Act that he had helped promote in the General Assembly.

Useful though it is to have the history set out in an accurate, accessible and readable form, for the non-specialist the most interesting lecture is the third: ‘The long shadow of the Disruption’, which continues the story through the *Free Church* case,⁵ the Churches (Scotland) Act 1905 and the eventual reunion in 1929. The crux, however, is the *Percy* case.⁶ Ms Percy was an associate minister in Angus accused of improper sexual conduct. Instead of undergoing trial by libel before her presbytery, after a process of mediation she agreed to resign her post and demit status as a minister. She then had second thoughts and went to an employment tribunal, alleging unfair dismissal and sex discrimination contrary to the Sex Discrimination Act 1975, section 6. The facts are set out at the beginning of the third lecture: suffice it to say that the House of Lords finally held that Ms Percy had been contracted ‘personally to execute any work

4 *Earl of Kinnoull v Presbytery of Auchterarder* (1838) 16 D 661.

5 *General Assembly of the Free Church of Scotland v Lord Overtoun* [1904] AC 515; 1904 7 F (HL) 1.

6 *Percy (AP) v Board of National Mission of the Church of Scotland* [2005] UKHL 73; 2006 SC (HL) 1; [2006] 2 AC 28.

or labours' for the Church for the purposes of section 82(1) of the Sex Discrimination Act 1975 and that the issue was not a 'matter spiritual' within the exclusive cognisance of the Church.

Lord Rodger expresses surprise that *Percy* passed totally unnoticed by the mainstream legal journals:

if Lord Moncreiff or any of the other early Victorian judges had been alive today, they would immediately have spotted that the *Percy* case raised that self-same vexed question of the spiritual independence of the Church of Scotland which first divided the Court of Session and then split Scottish society at the Disruption in 1843. (p 93)

He regards *Percy* as a significant development in an area which, it was thought, had been settled by the Church of Scotland Act 1921. Those who framed that Act would have assumed that the only remedy for alleged unfairness in the proceedings of a presbytery or in the actions of a board or committee would have been an appeal to the General Assembly – whose decision would be final. In modern practice, however,

a civil court will be reluctant to accept that it cannot deal with what it sees as an allegation of a substantial wrong. Like the House of Lords and the majority of the Court of Session in the *Auchterarder* cases, their Lordships in *Percy* were satisfied that they were not interfering in any matters spiritual. In the light of history, it would not be surprising if some in the Church thought otherwise. (p 112)

Moreover, though the appearance was entered in the name of the Board of National Mission, Ms Percy was, in fact, complaining about the actions of her presbytery. So, if *Percy* is symptomatic of anything, it seems to be pointing to a gradual change in the relationship between the courts and the churches: for example, since *Percy* it is now much harder than before for a church to claim that it is not in a contractual relationship with an individual stipendiary cleric.⁷

For anyone specialising in Scottish church or legal history over the long nineteenth century this book is essential reading; but it should also be of value to those with a more general interest in issues of church–state relations. 'The bookcase of many a Scottish household', notes Lord Rodger, 'used to contain a copy of Brown's *Annals of the Disruption* – that most sentimental of books'.

7 See *New Testament Church of God v Stewart* [2007] EWCA Civ 1004 – though the Court of Appeal was very careful not to pronounce this as a general rule and stressed that every case would have to be considered on its facts.

(p 2) Mine still does: and I am delighted to have *The Courts, the Church and the Constitution* as an unsentimental companion to set alongside it.

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The Identity of Anglicanism: Essentials of Anglican Ecclesiology

PAUL AVIS

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The author of a book review in the *Church Times* of 17 October 2008 observed that, nowadays, 'ecclesiology is not a fashionable subject'. If that view is correct (as it surely is), this work by Dr Paul Avis supplies a need, as is suggested by its subtitle, 'Essentials of Anglican ecclesiology'. The title itself hints at the author's unashamed Anglicanism and at one of his principal convictions, namely that there is no such thing as a worldwide Anglican Church, rather a communion or family of Anglican churches, which share a common history, attitudes and characteristics.

Dr Avis is well qualified to produce such a study, for he is widely read in Anglican history and in classical Anglican divinity. Moreover, his present appointment as General Secretary of the Church of England's Council for Christian Unity makes him uniquely well placed to be abreast of developments both in the Anglican Communion and in other Christian bodies. This work deserves to be read through from start to finish, for thus the reader can gain some impression of the sweep, scope and coherence of Anglican attitudes. Each chapter can also stand on its own and is available to the reader for future reference. This is, in fact, an excellent resource book, in which may be found the principal texts that in various ways inform and govern the Anglican churches. Some of the material in all but two of the eleven chapters has appeared in other forms in earlier studies by Dr Avis, but it has all been revised, rewritten and rearranged in the light of further reflection and subsequent developments.

Two chapters towards the middle of the work form the core of its treatment of the subject. These chapters, entitled 'The identity of the Anglican Communion' and 'Anglicanism and Eucharistic ecclesiology', are in fact the longest and most substantial. They are preceded by three that set the scene and are followed by four that treat related ecclesiological themes, namely baptism, the ordination of women, the consecration of women as bishops and 'Anglican ecclesiology in the twenty-first century'. At first sight, the two concluding chapters may