



COMMENT

Episcopacy, law and government

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Introduction and context

This Comment, based substantially on a lecture delivered to the Ecclesiastical Law Society on 5 July 2023, will explore how bishops engage with the legislature, comparing the example of Bishop George Bell in the last century with a rather different example in the present century, namely Pope Benedict XVI and his address to members of Parliament in Westminster Hall in 2010. The comparison will, I hope, indicate some historic dimensions to the issues of episcopacy, law and government that are pertinent today.

‘Ubi episcopus, ibi ecclesia’ (‘Where the bishop is, there is the Church’), a statement attributed to St Ignatius of Antioch, gives us a feel for the instinct of the second century Church in its early life and development.¹ The bishop is the signifier of an assembly which finds its identity in Christ and the demands that his Kingdom makes of us on earth, conforming us to its life in heaven. This identity is characterised by a quality that we describe as catholicity–fullness, or universality–recognised and understood always, everywhere, and by everyone.

The moral duties of the Christian in relation to civic life, law and government have always posed serious challenges. In the late second century, still the age of widespread martyrdom, the Letter to Diognetus, by an anonymous author to an intelligent pagan, clearly echoes Paul’s second letter to the Corinthians when it states that Christians ‘dwell in their own countries but only as sojourners; they bear their share in all things as citizens, and they endure all hardships as strangers ... They obey the established laws, and they surpass the laws in their own lives ... They are put to death, and yet they are endued with life. They are in beggary, and yet they make many rich’.²

¹ In the letter to the Smyrnaeans, Ignatius writes, ‘Wheresoever the bishop shall appear, there is the universal Church’; cf. J Lightfoot, *The Apostolic Fathers* (London, 1893). The role of the bishop as outlined by Ignatius is commended by Richard Hooker in J Keble (ed), *The Laws of Ecclesiastical Polity* (Oxford, 1845), vii.vi.8

² The Epistle to Diognetus, V.5, in Lightfoot (note 1).

Christians understand that the dignity of the human person, made by God and redeemed by Jesus Christ, the Son of God, is characterised by the right to liberty and privacy, the freedom to work, and to have the franchise and all that this entails: votes, elected membership of the legislature, a voice in the public square, and administration of the law. And then there is that other dimension which, far from subverting the well-being of the city and state where Christians live, enriches it with a quality of life that money cannot buy: 'they make many rich'. This flows from the freedom to worship and the practice of their religion within the society of which they are a part. The presence of the Lords Spiritual in Parliament is entirely understandable in this tradition, in the context of an established church, and emblematic of the contribution that Christians (alongside people of other faiths) make to the processes of government that shapes the nation's life.

It is significant that a bishop in the House of Lords undertakes a liturgical responsibility by reading a psalm and saying the Prayers at the beginning of each sitting of the House. These prayers are an indication that bishops function in the House according to their character. They pray liturgically – that is, in public – just as they also have the responsibility of encouraging virtue in public life and pointing to the damage that follows when it is ignored. Their counsel in temporal and spiritual matters will draw from the virtues of truth, justice and freedom that are foundational in the Christian tradition as essential qualities that we should expect to see in a modern democracy.

Bishop George Bell

In the House of Lords on 9 February 1944, Bishop George Bell rose to speak against the policy of blanket-bombing towns and cities in Germany as a means of bringing the Second World War to an end. The extraordinary courage of his speech was recognised by many at the time, but it also brought him ridicule (from the cartoonists) and disfavour from those in charge of military operations and ecclesiastical appointments. Bell had tabled a question asking His Majesty's Government for 'a statement as to their policy regarding the bombing of towns in enemy countries, with special reference to the effect of such bombing on civilians as well as objects of non-military and non-Industrial significance in the area attacked'³.

It was precisely in the policy of bombing targets that included areas of major cultural importance and dense civilian population, that Bell saw the Allies as following Hitler's barbarian strategy. Bell gave examples of the destruction of Hamburg and Berlin, with terrible loss of human life, together with loss of a cultural and intellectual inheritance that belonged to more than just the people of Germany. He warned that a similar fate could befall the City of Rome.

Bell spoke in the Lords as a bishop who embodied the Christian ideal that rises above national interests because it is grounded in the sacramental reality of baptism into Jesus Christ and draws its life from him. Bell drew denunciation from his fellow noble Lords who could see no good or potential

³ HL Deb 9 February 1944, vol 130 cc 737–55.

for reform and new life in the German people.⁴ These were Peers who did not have Bell's benefit of experiencing the bonds of faith, hope and charity that define the life of the Universal, *katholike*, Church: they lacked the vision outlined in the Letter to Diognetus I referred to earlier. Bell concluded his speech with these words:⁵

The Allies stand for something greater than power. The chief name inscribed on our banner is 'Law'. It is of supreme importance that we who, with our Allies, are the liberators of Europe should so use power that it is always under the control of law. It is because the bombing of enemy towns—this area bombing—raises this issue of power unlimited and exclusive that such immense importance is bound to attach to the policy and action of His Majesty's Government.

In the five years prior to his speech in 1944, Bell had befriended Gerhard Leibholz, whose wife, Sabine, was Dietrich Bonhoeffer's twin sister. In 1930, at the age of 28, Leibholz had been appointed as Professor of Public Law at Göttingen University. Although he was Lutheran, Leibholz was also Jewish, and so was 'purged' from the law faculty in 1935 and through Bell's connections he and Sabine eventually made their way to England.

Leibholz's exploration of the Church's proper interest in politics was founded on an appreciation of natural law, contrasted by the totalitarian regimes (Russia, Germany and Italy) that were besieging Europe with 'a revolutionary process of general secularism'. Leibholz wrote, 'At the end of this development stands the man who defies himself, no longer the servant of God, but the lord of the world, the self-appointed judge in the last resort over good and bad'.⁶ One can see in this friendship with Leibholz some of the influences that shaped Bell's 1944 speech. The very act of making that speech, it seems to me, was prompted by an instinct that it is proper for a bishop to (1) draw the nation's attention to the nature of law (which safeguards human dignity in its international and universal dimensions), and (2) reinforce the moral groove that this law should make in our national life.

I thought it was right to linger on Bell's speech because we would do well to remind ourselves of its details and its courage. But I also wish to present it as an expression of the importance of debate about episcopacy, law and government that raises questions about the legitimate contribution of Christian faith to public life, which might have less freedom of expression than perhaps we realise.

It is in the exploration of that concern that I turn now to the other example of a bishop in Parliament.

⁴ For example, Viscount Fitzalan of Derwent responded (*ibid*, cc 746–47): 'My Lords, I cannot possibly agree with what I understand to be the views of the right reverend Prelate who has just spoken in regard to bombing on the Continent. I am an out-and-out bomber, and I approve of the bombing action the Government have taken against Germany, and I hope that there may be more to come...'

⁵ *Ibid*, c 746.

⁶ G Ringshausen and A Chandler (eds), *The George Bell–Gerhard Leibholz Correspondence* (London, 2019), xvii.

Pope Benedict XVI

In September 2010 Pope Benedict XVI addressed both Houses of Parliament in a speech in Westminster Hall.⁷ He touched on his concerns about the relationship between natural law and the exercise of civil, secularised authority that Leibholz had outlined, in these terms:

Britain has emerged as a pluralist democracy which places great value on freedom of speech, freedom of political affiliation and respect for the rule of law, with a strong sense of the individual's rights and duties, and of the equality of all citizens before the law. While couched in different language, Catholic social teaching has much in common with this approach ...

The extent to which government might impose upon citizens had already been raised by the Speaker of the House of Commons, John Bercow, when he welcomed Pope Benedict and made reference to the trial of Thomas More. The Pope picked up on this theme as one that touches on freedom of conscience, noting that 'Each generation, as it seeks to advance the common good, must ask anew: what are the requirements that governments may reasonably impose upon citizens, and how far do they extend?'. The Pope asserted that, in some quarters, it was thought that the observance of Christian festivals should be discouraged 'in the questionable belief that it might somehow offend those of other religions or none', and that, with the intention of eliminating discrimination, some now argue that 'Christians in public roles should be required at times to act against their conscience'.

A shift in outlook

Just over a decade after that speech, I regret that the concerns Pope Benedict articulated have not proved to be groundless. In the pastoral office of serving a large, diverse, and generally affluent diocese, I would not find it difficult to locate evidence of anxiety about the observance of Christian festivals and a willingness to see Christian conscience made very private. It grieves me to say that State schools are examples of where this might be found, as is the academy. But it would extend to the arts, where not so long ago a photographer's work was not accepted for display because of its Christian content.

But anecdote, or even evidence more carefully researched, does not get us very far in trying to understand the more fundamental shift in outlook that is taking place. It is something I have heard described as the operation of an 'instrumentalist approach' to law that is disconnected from any received understanding of the human person and the international community. Pope Benedict was raising questions about freedom of conscience in our own day that resonate with events that took place in the reign of Henry VIII. But I think that we can go back to an earlier Henry—Henry II—and discover that

⁷ The text of the lecture can be accessed here: <https://www.vatican.va/content/benedict-xvi/en/speeches/2010/september/documents/hf_ben-xvi_spe_20100917_societa-civile.html>, accessed 28 July 2023.

instrumentalist approaches to law were evidently at play in a stand-off between episcopal and political power that led to the martyrdom of St Thomas Becket.

An article in this *Journal* by Bishop Rowan Williams (one of Becket's successors) points us to some of the issues that characterise how Christians negotiate the relationship between commitment to the law of the land and the claims upon them of the Kingdom of God, which both fulfil and transcend the civil law, as the Letter to Diognetus describes.⁸

In the elaboration of an instrumentalist approach to law, Williams recognises that Henry II's intentions were not 'innocent legal universalism'. The Clarendon 'customs' extended the King's reach into the spiritual conscience of every subject in the realm, over-ruling duty to God in every way, including the crucial area of penitential discipline.⁹ This intrusion was an example of law that was 'disconnected', in the sense that it did not recognise the legitimacy of that range of proper obligations that enrich society and constitute human dignity and international relations (such as family relationships, philanthropic networks of charity, arts and study). These are described by Williams as giving a 'thick' account of social obligation,¹⁰ which defends the freedom of religion and in a 20th century context gave rise to Anglican schools that withstood the state-mandated racial discrimination of South Africa in the 1950s, and those who were religiously motivated conscientious objectors in the Great Wars.

At the same time, Williams identifies the danger of defending an unacceptable model of Church polity in which immunity is granted to clergy on the basis of the effect of their sacramental function, but with no sanction for the unworthiness, or blatant wickedness of the minister. This casts a long shadow across Christian history, one that we see around us internationally today, as the Church, irrespective of theological tradition, struggles with the sins of abuse.

Taking stock

At this point it is perhaps worth pausing to reflect on what has emerged so far in this survey of the bishop in Parliament. We began with Bishop George Bell, who in the House of Lords spoke about law as something greater than power, recognising its legitimacy when it is rooted in human dignity and international relations as expressive of an ordering of creation that allows space for faith in God. Space for faith in God—as characteristic of British traditions of freedom, respect and human rights—was at the centre of Pope Benedict's speech in Westminster Hall nearly 70 years after Bell, but with the warning that recognition of the legitimacy of that space is waning. And then ten years after Pope Benedict's speech, Bishop Rowan Williams invited us to reflect on the dangers of law that is instrumentalist in its regulation of all forms of association, either within the Church, where it can be used to protect evil and self-interest in the name ecclesiastical privilege, or in the hands of the sovereign or the state, where it usurps the sacred space of the Christian religion.

⁸ R Williams, "'Saving Our Order": Becket and the Law' (2021) 23 *Ecc LJ* 127–139.

⁹ *Ibid.*, 137.

¹⁰ *Ibid.*, 138–139.

We also began with the Letter to Diognetus, which sought to explain to an intelligent pagan friend how Christians seek to negotiate their obligations to the kingdom of this world and the kingdom of heaven, to Caesar and to God. It is to that negotiation, and how it is undertaken wisely and with courage, that I now wish to turn. In doing so, I shall identify three issues that press upon us now in the context of law, freedom of conscience, and government that exceeds its legitimacy, recognising that each issue touches on the exercise of episcopal ministry and Government interest.

Seal of the confessional

The first of these is the question of the seal of the confessional, and I am immensely grateful to the Ecclesiastical Law Society Working Party for the work that it has undertaken on this matter.¹¹ The Government has been cautious about making mandatory reporting of suspected child abuse and neglect a statutory obligation.¹² But on 3 April 2023 the Home Secretary announced¹³ plans for people who work with children to be required by law to report child sexual abuse or face sanctions, referencing the recommendations of the Independent Inquiry on Child Sexual Abuse (IICSA) for this policy shift. That position was confirmed when the Government published its response to IICSA's report.¹⁴ The consequences of this policy change for the Seal of the Confessional, at the time of writing, remain to be seen.

In B.5.3, para 22, the IICSA report on the Anglican Church¹⁵ noted that the Church of England's Working Group on the Seal of the Confessional was unable to come to a common mind, and made one recommendation: the 'improved training for priests during both initial ministerial training and afterwards'.¹⁶ It is not clear that this has been acted upon or, indeed, that there is uniform training in place that could be improved.

This debate has parallels with the penitentiary systems that fuelled the conflict between Becket and Henry II. Protection of the clergy then, as now,

¹¹ *The Report of the Ecclesiastical Law Society Working Party on the Seal of the Confessional*, 30 June 2023, <<https://ecclawsoc.org.uk/wp-content/uploads/2023/07/The-Report-of-the-ELS-Working-Party-on-the-Seal-of-Confession.pdf>>, accessed 28 July 2023.

¹² cf. 'Reporting and acting on child abuse and neglect: Summary of consultation responses and Government action', 5 March 2018, paras 16–26, which is available here: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685463/Reporting_and_acting_on_child_abuse_and_neglect_-_response_print.pdf>, accessed 28 September 2023.

¹³ See, for example, <<https://www.gov.uk/government/news/pm-to-clamp-down-on-grooming-gangs>>, accessed 29 July 2023.

¹⁴ *Government response to the Final Report of the Independent Inquiry into Child Sexual Abuse* (May 2023), 3, which can be accessed at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1158298/Government_Response_to_IICSA_FINAL.pdf>, accessed 28 September 2023.

¹⁵ IICSA, *The Anglican Church: Safeguarding in the Church of England and the Church in Wales* (October 2020), which can be accessed here: <<https://webarchive.nationalarchives.gov.uk/ukgwa/20221215023918/https://www.iicsa.org.uk/key-documents/22519/view/anglican-church-investigat-ion-report-6-october-2020.pdf>>, accessed 28 September 2023.

¹⁶ *Ibid.*, 77.

was an issue that can have tragic consequences for those who have been abused, and for the clergy, irrespective of their order. But it is the laity who stand to lose most if mandatory reporting over-rides the Seal of the Confessional, especially those who carry the trauma of abuse, the guilt it so often generates, and who are not ready to revisit the abuse in the formal processes of disclosure and enquiry. An absolutely safe space would be denied to them, as to others who regularly seek repentance and amendment of life, and that comfort that is the work of Jesus Christ, the Shepherd and Priest of our souls.

Here is an example of the instrumentality of law that looks as though it is poised to deny freedom to practise Christian faith in one of the most intimate areas of its expression. The legitimacy of such a daring invasion would surely equate to the issues of religious conscience that Pope Benedict alluded to over a decade ago, and is one with which bishops in the House of Lords will need to engage with the same courage shown by George Bell.

Safeguarding

Second, and staying with the IICSA enquiry, its report and recommendations, it has recently been reported that the Archbishops' Council has decided to 'reset' the Independent Safeguarding Board, putting interim arrangements in place and making 'independent oversight of the Church of England's safeguarding ... an urgent and independent first step away from the suspicion of marking our own homework.'¹⁷

The tenor of this statement is at odds with IICSA 'Recommendation 1' for the structure of safeguarding in the Church of England, which states that 'Diocesan safeguarding officers should be employed locally, by the Diocesan Board of Finance ... [and] professionally supervised and quality assured by the National Safeguarding Team.'¹⁸ As has often been observed, 'We still have to do our own homework'.

An abnegation of responsibility for law and regulation is as much of a distortion as the uninvited seizing of that responsibility. The Church cannot ask others to do its safeguarding work, any more than it should exclude others from assessing it. Interactive dialogue is a good model for safeguarding, and it is also a model that Pope Benedict outlined in his Westminster speech. He noted that both religion and reason can become corrupted and distorted, concluding that 'The world of secular rationality and the world of religious belief need each other and should not be afraid to enter into a profound and ongoing dialogue, for the good of civilization. Religion ... is not a problem for legislators to solve, but a vital contributor to the national conversation'.

In the arena of safeguarding, dialogue and conversation are essential. This enables the Church to learn how to be a responsible partner in protecting the vulnerable of every age and condition. It should also enable the Church to articulate its understanding of evil, sin, repentance and forgiveness and the

¹⁷ See, for example: <<https://www.churchofengland.org/media-and-news/press-release/statement-archbishops-council-safeguarding-independent-board>>, accessed 28 July 2023.

¹⁸ *The Anglican Church: Safeguarding in the Church of England and the Church in Wales* (note 15), 116.

cost that attaches to every part of that understanding. The confidence with which the Church does this in dealing with its own failures will be an important qualification for how the Church—including the Lords Spiritual sitting in Parliament—contributes to the legislative process in areas of ethical complexity, such as end-of-life issues, and employment for the terminally ill. In both cases, reference to the sanctity of life sets a standard that is indicative of a unique and irreplaceable category, irrespective of one's belief in God.

Same-sex marriage

Third, Ben Bradshaw, the MP for Exeter and a practising Anglican, is sponsoring a Bill in the House of Commons that will enable clergy of the Church of England to conduct same-sex marriages on Church of England premises in certain circumstances. Bradshaw is realistic that the Bill has no chance of becoming law but his motive is 'to encourage the bishops to stick to the commitments and timetable agreed by February's Synod' in further refining, commending and issuing the *Prayers of Love and Faith*, although the motion to do this was also amended so that the College and House of Bishops would not 'propose any change to the doctrine of marriage, and their intention that the final version of the *Prayers of Love and Faith* should not be contrary to or indicative of a departure from the doctrine of the Church of England'. Bradshaw concluded that he hopes the Bill 'sends a clear message to the Church of England leadership about where Parliament stands on these matters'.¹⁹

There is, of course, a long history of disagreement between Parliament and the Church of England. The shock of Parliament's rejection of the 1928 Prayer Book went deep. But the trajectory of liturgical reform was also an enduring one. It was not until 1966 that alternative services were authorised and there has hardly been a decade since then when the Liturgical Commission has not offered a new alternative for some pastoral circumstance.

But the phrase, 'where Parliament stands' is a chilling one. It suggests that Parliament believes it has the authority to require the Church of England to change doctrine and practice in order to conform to *Parliament's* assessment of the Church's mission. On 24 January 2023, when Bradshaw asked the Second Estates Commissioner, Andrew Selous MP, for a statement on Equal Marriage in the Church of England, a discussion followed in which it also became evident that theological considerations were to be secondary to Parliament's wishes. One MP reverted to the issue of women bishops, bemoaning legislation that provided for the existence of 'flying bishops and people under them to refuse to recognise women ordained in the Church of England'.²⁰

Here, again, we must surely be reminded of the question that Pope Benedict put to Westminster: 'What are the requirements that governments may reasonably impose upon citizens, and how far do they extend?'. As the Second Church Estate's Commissioner (rightly) explained in response to the proposed

¹⁹ HC Deb 21 March 2023, vol 730 cc185–188.

²⁰ HC Deb 24 January 2023, vol 726 c880.

Bill by Bradshaw to enable clergy of the Church of England to conduct same-sex marriages on Church of England premises.²¹

[The Bill] seeks to usurp the role of the democratically elected General Synod of the Church of England, as well as to remove the freedom of the Church of England to decide its own doctrine, a freedom that members from all parts of this House champion for religions and beliefs all over the world and one that we should therefore apply equally to the Church of England.

Conclusion

It seems that there is a trend away from tolerance and dialogue and it is animated by demands for compliance and conformity. The threat of a Bill that would compel the Church of England to embrace equal marriage might not be very serious, but its tone is wrong. It lacks reasonableness and it goes too far. It reminds me of an exchange between Thomas Cromwell and Thomas More in *A Man for All Seasons*. More says to Cromwell: 'You threaten like a dockside bully'. 'How should I threaten?', comes the reply. 'Like a Minister of State, with justice', says More.²²

The justice meted out to Thomas More was execution, dying as the King's good servant, and God's first. Although no blood will be shed in the Church of England of the 21st century, it is possible that there will be an element of martyrdom, as an appetite for the law and the appreciation of its proper demands upon us seems to weaken.

The commodification of the law as an instrument of political expediency is a shocking thought and yet it is not unfamiliar in modern politics. It would be a cause of utter dismay to Bishop George Bell, as it should to us, for whom ecclesiastical law is a form of theological discourse that seeks to apply the wisdom of theological narrative to the material, practical and evangelistic processes of life, giving evidence for the faith received, its elucidation, transmission, and articulation most perfectly and gloriously in the dignity of worship.

For all that Parliament might stand ideologically in a different place from the theological position of the House of Bishops or, indeed, the General Synod, there is much legislative work that is done by bishops in Parliament that is truly remarkable, in the fields of education, social care, immigration, gambling, prisons, artificial intelligence and many other areas of serious, social concern. This is an affirmation of our conviction that law must also be an emblem of truth, of peace, and of goodness.

Reform of the House of Lords is not one of those pressing matters that the Lords Spiritual place very high on the list of priorities, although it is not absent and the recent expansion of numbers in the Lords does make our 26 look quite meagre. What is more evident is the quality of Christian faith that

²¹ HC Deb 21 March 2023, vol 730 c187.

²² R Bolt, *A Man for All Seasons* (London, 1960), Act 2, 79.

animates so many of the Peers: the list is varied and extensive. Their work is a significant example of the true vocation of the baptised Christian, modelling how to navigate the increasingly complex terrain described in the Letter to Diognetus: 'They obey the established laws, and they surpass the laws in their own lives'.

The ministry that the bishop might undertake for them in Parliament is a confidence that will be humble, clear-sighted, theologically grounded, and joyfully infectious. The Parliamentary exercise of liturgical prayer is an expression of this. We can see it modelled by Hananiah, Azariah and Mishael in the book of Daniel, as they walk in the furnace and with one voice praise God, saying Blessed be God, accompanied, of course, by one other: Christ himself.